No. 85-1708

Supreme Court, U.S.
FILED
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CLERK

In the Supreme Court of the United States

October Term, 1985

STATE OF CALIFORNIA, et al.,
Appellants,

v.

CABAZON BAND OF MISSION INDIANS, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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1. DOCKET ENTRIES (FEDERAL DISTRICT COURT)

83-1117

CABAZON MISSION INDIANS-v-RIVERSIDE CO.

DATE	NR.	PROCEEDINGS
2/23/83 lp	1.	Fld complnt. Issd sumns. Case may be referred to Mag Kronenberg for discvry. LODGED proposed OSC re prel inj & TRO.
2/28/83 sb	2.	Fld pltf proof of serv sumns & complt etc on Ben Clark on 1-25-83
	3.	Fld pltf proof of serv sumns & complt etc to County of Riverside Ca Sec on 1-25-83
	4.	Fld retn Proof of serv
2/24/83 sb	5.	MIN ORD: HRG TRO ert ord that the TRO will issue as to both the poker & bingo operations Matter set fr hrg on prelim inj 3-4-83 1:30 p.m. deft opp due NLT 4 p.m. 3-1-83 pltf reply NLT 9 a.m. 3-3-83
sb	6.	Fld Ord (CHH) OSC re prelim inj no date shown & on bond due & OSC re prelim inj & TRO serv to each deft NLT 2-25-83 noon
2/23/83 sb	7.	Fld Ord (LEW, CHH) transfring actn to cal of Judge Laughlin E. Waters fr all fur pr proceeding. Case may be ref to Mag Tassopulos fr disc. cc ptys
3/ 2/83 gth	8.	MIN ORD: ORD that hrg on prelim inj be cont to 3/10/83, 1:30 p.m.
	9.	Fld defts opp to OSC re prelim inj.

DATE	NR.	PROCEEDINGS
3/ 7/83 gth	10.	Fld pltfs reply memo in suppt of prelim inj.
3/10/83 sb	11.	Fld deft supplemental memo of P/A in opp to prelim inj.
	12.	MIN ORD: crt cont matter prelim inj yo 5-5-83 9 a.m.
	13.	Fld deft decar of Jerome Tohave supperindent of Burear of Indain Affair.
	14.	Fld deft delcar of Leroy Alvarez.
	15.	Fld deft delcar of Lainda Streeter.
	16.	Fld deft delcar of Joseph Benitez.
	17.	Fld deft delcar of Callaway.
	18.	Fld deft delcar of Marc Benitez.
3/24/83 wa	19.	Fld defts ANSWER TO CMPLT.
3/22/83 wa	20.	Fld Stip & ORD (LEW) that defts Cnty of Riverside & Ben Clark shall hv up to & including 3/24/83, to file their respo to cmplt.
4/ 7/83 wa	21.	MIN ORD: Note that hrng re fur procdgs on prelim inj set fr 5/5/83, 9 A.M. is cont'd to hrng on 5/5/83, 1:30 P.M.
4/13/83 wa	22.	Fld Stip & ORD (LEW) that following briefing schedule is hereby adopted w/ regard to hrng in this mttr now set fr 5/5/83, 1:30 P.M.
4/18/83 wa	23.	Fld defts' 2nd suppl memo of P&A in opp to applic fr prelim inj.
wa	24.	Fld pltf's suppl memo in suppt of prelim inj.
4/22/83 wa	25.	Fld pltf's reply memo to deft's 2nd suppl memo of P&A in opp to applic fr prelim inj.

DATE	NR.	PROCEEDINGS
4/25/83	wa 26.	Fld pltf's addendum to reply memo.
4/29/83	wa 27.	MIN ORD: Crt's own motn that hrng on prelim inj set on cal fr 5/5/83, has been cont'd to 5/6/83, 9 A.M.
5/ 9/83	rib 28.	Fld prelim inj & ORD (LEW) that pend trial herein defts are enjoined & restrained frm enforcing Co ordinance #331 & 558 agnst plf & fur Ord that bond be fixed in amt of $50,000.00. (Ent 5/10/83 ntfd prtys).
5/ 6/83	wa 29.	MIN ORD: Crt hrs oral argumnt of cnsl & ords that a prelim inj shall iss. Crt will sign prop perlin inj. lodged by cnsl. Crt's exh 1 is marked fr ID & admitted into evidence. Exh is a lttr rec'd by Crt frm The Lou Watts Co.
	wa 30.	Fld Crt's mandatry stat conf cal 6/20/83, 1:30 P.M.
5/19/83	wa 31.	Fld bond for Undertkng under R. 65(c) of FRCP in the amt of $50,000.00 frm The Aetna Causalty & Surety Co.
5/25/83	wa 32.	Fld proof of serv of Undrtkng R. 65(c) srvd Glenn R. Salter, Esq. on 5/25/83.
6/10/83	wa 33.	Fld joint stat reprt.
6/20/83	wa 34.	MIN ORD: cnsl to file docs by 7/29/83. Mttr will then stand subm until fur ord by crt.
7/11/83	wa 35.	Verificatn of AMENDED COMPLAINT, Plaintiff.
7/26/83	wa 36.	Applic & Ord fr lv to amend cmplnt, no hrng reqstd. Plaintiff Amended verified cmplnt fr declratry & inj relief & damages.

DATE	NR.		PROCEEDINGS
8/17/83	wa	37.	ANSWER TO AMENDED COMPLNT. Defendant.
9/26/83	gth	38.	Notc & mtn fr partial S/J retnbl 10/17/83, 9 A.M. MO LDGED prof F/F & conclu & jdmt. DEFT.
9/28/83	gth	39.	Amd proof of srvc of notc & motn fr conslidtn srvd Charld Scott, Barbara Karsmer, Glenn Feldman Atty genl Van de Kamp. 9/26/83. Defts.
10/ 5/83	gth	40.	REspon to motn fr consolidatn. Plaintiff.
10/17/83	lp	41.	Memo of P/A Plaintiff 10/31/83 9 A.M.
10/17/83	lp	42.	statmnt of genuine issues, Plaintiff.
10/31/83	gth	43.	Notc & motn for fr interventn 11/21/83, 9 A.M. State of Calif. LODGED prop ORD. State of Calif.
10/31/83	gth	44.	Purs to lettr 10/24/83 defts motn is w/d & hrg is off cal re S/J. MO.
11/14/83	cw	45.	Ntc of mtn 12/5/83, 9 A.M. for lv to file cntrclm. LODGED prop ord & cntrclm.
11/16/83	gth		LODGED prop ORD grntng motn fr leav to intervene. State of Calif.
11/15/83	cw	46.	Ntc of no opp to mtn for intervention. Plaintiff.
11/25/83	cw	47.	Opp to mtn for lv to file cntrclm. Plaintiff.
12/ 5/83	cw	48.	MO: Defts mtn for lv to file cntrclm argued & denied.
*11/21/83	cw		ORD granting mtn for lv to intervene.
12/20/83	cw		Ntc re MSC set 2-13-84, 1:30 P.M.
1/17/84	cw	51.	Joint rpt of early meeting.
1/31/84	cw	52.	Joint stat rpt.
2/13/84	cw	53.	MO: MSC held.

DATE	NR.	PROCEEDINGS
6/26/94	wh 54.	Agreed upon stmt of uncon fact as between Pltf, defts & deft interv to be usd in X-mots for S/J pltf.
6/29/84	wh 55.	exh in supp of deft's mot for S/J deft.
	56.	Note of hrg 9-24-84 @ 9:00 A.M. deft.
	57.	Mot for S/J deft.
	58.	Memo of P&A in supp of mot for S/J deft.
7/ 2/84	wh 59.	Memo of P&A in supp of pltf's mot for aprtl S/J pltf.
	60.	Pltf's note & mot for partl S/J pltf.
		LODGED stmt of uncon fact & concl of law.
		LODGED propsd S/J.
7/ 6/84	wh 61.	Defts opp to mot of Morongo Band of Mission Indians for lv to fle A/C, 7-16-84, 9:00 A.M. defts.
	62.	Note & mot for S/J pltf Morongo Band of Mission Indians 9-24-84, 9:00 A.M.
		LODGED stmt of uncon fact & concl of law.
		LODGED ord & jgmt.
	63.	Memo of P&A in supp of pltf's mot for S/J pltf Morongo Band of Mission Indians.
7/11/84	wh 64.	Declr of G R Salter deft.
7/17/84	wh 65.	1ST A/C & suppl complt pltf.
7/27/84	wh 66.	Deft's & deft intervenr's reply memo of P&A deft Riverside County.
7/31/84	wh 67.	Rply memo in supp of mot fr partl S/J pltf 9-24-84, 9 A.M.

DATE	NR.	PROCEEDINGS
8/ 1/84	wh 68.	ANS TO 1ST A/C & SUPPL COMPLT of Mogongo Band of Mission Indians deft Cnty of Riverside & B Clark & deft in intervntn State of Calif.
8/ 6/84	am 69.	Pltf Morongo Band of Mission Indians' memo of P&As in opp to defts' mtn for s/j.
8/ 6/84	am 70.	Pltfs' jnt ntc of mtn & mtn to strk declrtns of Patrick H. Hopper & William J. Wallace.
8/ 6/84	am 71.	Memo of P&As in suppt of jnt mtn to strk declrtns of Patrick H. Hopper & William J. Wallace.
8/14/84	wh 72.	EX PARTE applic fr ord ext ti to opp mot deft Riverside Cnty. LODGED ord.
	73.	Declr of R E Walston deft Riverside Cnty.
8/17/84	wh 74.	Deft's opp to pltf's mot to strk declrs deft Riverside Cnty.
8/20/84	wh 75.	ORD ext deft's ti to fle resp to pltf's mot to strk declrs to 8-20-84 deft Riverside.
8/24/84	wh 76.	Applic to fle suppl declr deft Riverside County. LODGED ord.
8/27/84	wh 77.	Pltf's rply memo in supp of jnt mot to strk declrs 9-10-84, 9 A.M.
8/28/84	wh 78.	Pltf Morongo's opp to applic to fle suppl authrties in supp of jnt mot to strk declrs of P Hopper & W Wallace & in supp of pltf's mot fr S/J 9-10-84, 9 A.M.
	79.	ORD GRNTG deft's applic to fle suppl declr to mot fr S/J deft Riverside Cnty.
9/13/84	wh 80.	EX PARTE applic fr ord shrtng ti fr svc of mot to and prelim inj & waivng hrg pltf.

DATE	NR.	PROCEEDINGS
		LODGED ord, mot, memo & declr.
9/10/84	wh 81.	MO: Pltf's joint mot to strk declrs of Hooper & Wallace DEN.
9/14/84	wh 82.	Opp of County defts to req fr modifcatn of P/I issued fr Morongo Band.
9/20/84	wh 83.	Stip & ORD cont hrg on x-mots fr S/J to 11-5-84 @ 9 A.M. deft/intrvenr State of Calif.
9/21/84	wh 84.	Cabazon Band's post hrg memo pltf.
10/ 1/84	wh 85.	Note & mot to amd P/I w/o hrg thereon pltf Morongo.
	86.	ORD tht time fr svc of pltf's mot to amd P/I be shrtned frm 21 to 4 dys.
	87.	ORD tht pltf's mot to amd P/I DEN.
10/ 9/84	kmb 88.	Fld deft-intervenor St of Calif's reply to post-hrg memo of Cabazon band.
10/15/84	cw 89.	Suppl exhs in suppt of mtn for s/j. Pltf.
10/22/84	wh 90.	Memo of P&A in resp to pltf's suppl exh deft Riverside.
	91.	Pltf's jnt memo of P&A w/respct to depo of W J Wallace 11-5-84 @ 9 A.M. pltf.
10/25/84	wh 92.	Deft's reply to pltf's joint memo of P&A w/respct to depo of W J Wallace.
10/30/84	wh 93.	Stip & ORD tht any memo of P&A fld by pltfs must be recvd by defts by 10-22-84; any resp memo by defts must be recvd by pltfs by 10-26-84 @ 12 noon; any reply memo by pltfs must be recvd by defts by 10-29-84 @ 12 noon pltf.
	94.	Pltf's jnt resp to deft's reply memo re Wallace depo & suppl exhs 11-5-84 @ 9 A.M. pltf Morongo.

DATE	NR.	PROCEEDINGS
	95.	EX PARTE applic fr permission to include suppl exh deft Riverside. LODGED ord.
11/ 1/84 wh	96.	ORD grntg ex parte applic tht deft may include suppl exh.
11/ 5/84 wh	97.	MO: Deft's mot fr S/J DEN; pltf's mot fr partl S/J GRNTD.
12/ 5/84 wh	98.	Declr of B E Karshmer re fndgs of fact & concl of law pltf Morongo. LODGED prop ord & prop jgmt.
	99.	Declr of G L Feldman, pltf Cabozon.
	100.	Pltf Cabazon's jnt ex parte applic fr lv to fle objs to addtnl prop fndgs & concl to be submittd by defts or, suggestng tht hrg on mattr be convened.
12/ 6/84 wh	101.	ORD GRNTNG pltf's jnt ex parte applic; pltfs shll srv & fle wrttn objs to any addtnl prop fndgs of fact & concl of law submitted by defts within 5 dys of svc upon pltf. pltf Cabazon Band of Mission Indians.
12/ 6/84 wh	102.	ORD tht mot of pltf Cabazon Band of Mission Indians fr partl S/J agnst defts & deft-intrvenr GRNTD, & mot of defts & deft-intrvenr fr S/J DEN; tht Cal Penl Code 326.5 & Rivrside Cnty Ordnce #558 are of no force & effect on &-within boundries of Cabazon Indian Reservatn agnst Cabazon Band Mission Indians, members or other persons engaging in, or permittd to be played, tribally sponsered bingo games, & defts, deft-intrvnr hv no authrty or jurisdc to attempt or enfrce said Cal Penl Code or Rivrside Cnty Ordnce as to bingo

DATE NR. PROCEEDINGS

games on Cabazon Indian Reservatn, & said defts are hereby perm restraind & enjoind frm tkng steps to enfrce said Penl Code or Cnty ordince within boudries of said Reservatn: tht Cal Penl Code 330-31 & Rivrside Cnty Ordnce #331 are void as within said Reservatn fr members or others frm playing or wagering on tribally sponsered & sanctnd games of draw poker, lowball draw poker, panguingue or othr card games not prohibitd undr Cal Penl Cde 330-31; said defts perm enjoind from any attmpts ¶ enfrcing saif Penl Cde or Cnty Ordnce within Cabazon Reservatn Boundries as to the playing of said tribally sponsered, sancnd games; tht plf to recovr costs of suit herein frm defts, deft-intrvnr; pltf shll hv until 30 dys follwng entry of finl jgmnt on remng dmge claim to fle & srv a single applic fr atty fees & expenses covrng entirety of ths case. (ENT 12-10-84) mld notcs.

12/ 6/84 wh 103. ORD tht pltf Cabazon's mot fr partl S/J GRNTD, deft-intrvnr's mot fr S/J DEN; tht pltf shll recvr costs of suit herein & hv to 30 dys fllowng entry of finl jgmnt to fle & srv single applic fr atty fees & expenses covrng entrity of case; tht grntng pltf's mot fr partl S/J does not dispose of pltf's claim of damage aganst defts, whch calim shll still be adjudc by ths Crt; Crt hs detrmnd tht there is no just reason fr delay & directs tht ths jgmnt be ent. (ENT 12-10-84) mld notcs.

12/17/84 kw 104. Deft obj to prop find/fact & conclusions of law & prop addl conclusion of law (Cabazon Band).

DATE	NR.	PROCEEDINGS
		LODGED PROP ORD.
	105.	Deft obj to prop find/fact & conclusions of law, & prop addl conclusions of law (Morongo Tribe).
12/20/84 wh	106.	Pltf Cabazon's resp to deft's objs to prop fndgs & concl & addtnl prop concl of law. pltf Cabazon.
12/19/84 BC	107.	Fld. NOTC OF APPEAL to the 9th cir C/A frm ord & jdgmnt ent on CV 83-3037-LEW 12/10/84. Forms given Billing letter sent.
12/26/84 wh	108.	Notc of applic to Crk to tax costs: BILL OF COSTS hrg set 1-9-85 @ 1:30 P.M. pltf Cabazon.
1/ 2/85 wh	109.	Stmt of issues deft Rivrside Cnty.
	110.	Cert of waiver of reptr's transcr deft Riverside Cnty.
1/ 7/85 kw	111.	Resp to defts objs to Bill of Costs, pltf.
1/ 8/85 kw	112.	W/drawl of cert of waiver of reptr's transcript (Cabazon) deft.
1/10/85 kw	113.	Pltf Morongo Bank resp to deft objs to Bill of Costs. (PLACED IN FILE NOT USED.)
*1/ 2/85 wh	114.	Objs to bill of costs 1-9-85 @ 1:30 P.M. deft Rivrside.
1/18/85 wh	115.	Fld letter to R Janisch frm K G Griffith dtd 1-17-85 re costs.
2/12/85 kw	116.	STIP & ORD telephonic stat conf on remaing damage claim 3-4-85 11:00 A.M., cnsl fr pltf shal initiate reqrd conf cal; joint stat conf to be fld nlt 10 days prior to hrng.

83-3073

MORONGO BAND-v-RIVERSIDE COUNTY

DATE	NR.	PROCEEDINGS
5/16/84 sb	1.	Fld Complt Issd Sumns.
5/17/83 sb	2.	Fld Ord (LEW) (R) transfring actn to cal of Judge Laughlin E. Waters fr all fur proceeding. Case may be ref to Mag McMahon fr disc. cc ptys.
*5/16/83 bp	3.	Fld ORD (R) that pltf's time for the hrg on the said mot for a prelim injunctn is hereby shortened so that the hrg will occur on 5-20-83 @ 9:00 A.M. & defts will file & srve their opp to the said mot no later than 48 hrs prior to such hrg date.
5/20/83 bp	4.	Fld deft's notc of tkng depos of Liquid Light, Inc. on 5-23-83 @ 10:00 A.M., Judith Walden on 5-23-83 @ 1:30 P.M., Luc Noel on 4-24-83 @ 10:00 A.M., Barry Podwell on 5-25-83 @ 10:00 A.M. Issd (4).
*5/18/83 bp	5.	Fld defts memo of P&As in opp to req for prelim injunctn.
5/20/83 wa	6.	Fld ORD (LEW) pltf's motn fr prelim inj, defts, & each of them, etc. & all those actng in concert w/them are preliminarlily enjoined, pending a final judgmnt frm engaging in any arresting or thereatening to arrest. etc.; interfering w/ or harrassing pltf, etc while or aftr any persons are on Morongo Indian Reservatn & are engaged in playing bingo. (ENT 5-31-83) Mld cpy & notc prtys.

DATE	NR.	PROCEEDINGS
6/ 6/83 bp	7.	Fld defts' ANSWER TO COMPLAINT.
*6/ 3/83 bp	8.	Fld retn of summs, servd Co of Riverside, (person with whom left Nancy Romeo, Auth agent) 5-16-83 & Ben Clark, Sheriff of the Co of Riverside (person with whom left Glenn Salter Auth agent) 5-16-83.
*5/20/83 rlb	9.	MIN ORD (LEW): Hrg re prlm inj: Case called Hrg hld; Crt Grants prelm inj as amended.
7/ 6/83 bp	10.	Fld notc re: Mand Stat Conf set for 9-6-83.
8/19/83 sb	11.	Notc & motn intervention 9-19-83 9 A.M. Statw of Ca.
8/25/83 eg	12.	Stmnt fo no opp to mtn to intervene of State of California Defendant County of Riverside & Ben Clark.
	13.	Joint status report.
8/29/83 sb	14.	Memo of P/A.
9/ 6/83 sb	15.	Mandatory Status Confcont 10-17-83 1:30 P.M. MO.
9/28/83 rlb	16.	Amended proof of srv ntc of mot for partial S/J, etc.
*9/26/83 rlb	17.	Dfts' ntc of mot & mot, rtnble 10/17/83, 9 A.M., for consolidation; memo of p/a.
10/12/83 sb	18.	supplentna memo of P/A in opp to motn fr intervention.
	19.	supplemntal memo of P/A in opp to motn fr intervention.
10/14/83 kw	20.	Stip & ORD contg mot fr consoldaton 10-31-83 9:00 A.M.
*9/27/83 kw	21.	Subst of atty & Ord allowing Barbara E. Karshmer etc Plaintiff.

DATE	NR.	PROCEEDINGS
10/17/83	kw 22.	Cause called; hrg held; State of Cal. fr interventon granted. MO.
10/17/83	cw 23.	Memo of P&A in opp to defts mtn for consol.
10/31/83	kw 24.	answ in intervention state of ca.
10/31/83	am 25.	Fld ORD that State of Calif, through its atty general be permitted to intervene as party deft & ansr in interventn attached to the motn to intervene shall srv as ansr in intervntn in this actn.
10/31/83	am 26.	MIN ORD; Motn to consolidate w/CV 83-1117 is GRANTED. motn to designate the Morongo case as lead case is DENIED; motn fld for S/J set for hrng 11-21-83 is placed off calndr & to be reset by crt.
11/14/83	am 27.	Fld deft note of motn 12-5-83 9 A.M. for leave to fl cntrclaim.
		LODGED prop ord & cntrclaim.
11/25/83	kw 28.	Memo of P&A in opp to deft mot fr lv to fil a contrclaim. Plaintiff.
12/ 5/83	sb 29.	deft motn to fr lv to file counterclaim denied.
6/21/84	as 30.	Memo to P's & A's in suppt of mot to file amended/supplmt complnt. Pltf.
6/21/84	as 31.	Note of mot to file amended/supplmnt complnt. Pltf.
		LODGED ORD.
7/16/84	sa 32.	MIN ORD: Pltfs motn to file amended & supple complt is granted. Ct ords no further discovery to be granted.
7/25/84	sa 33.	ORDER: Amended & supple complt lodged w/said motn be fld, & that defts

DATE	NR.	PROCEEDINGS
		shall have 10 days from the date of this ord in which to file their pleadings in resp. pltf.
7/27/84	sa 34.	Reply memo of P&As. Deft & deft intervenor.
8/17/84	sa 35.	Opp to pltfs motn to strike declarations. deft.
8/23/84	lpc 36.	Memo in reply to deft opp to mot to strk Hopper & Wallace declars-Morongo.
8/24/84	sb 37.	Applic to file supplemental declar.
8/28/84	sb 38.	Ord granting applic to file supplemental delcar.
9/20/84	sa 39.	Stip & ORD x-motns for S/J is cont to 11-5-84 9 A.M.
11/ 5/84	sa 40.	MIN ORD: Pltfs motn for partial S/J is granted.
12/ 6/84	wh 41.	ORD tht mot of pltf Cabazon Band of Mission Indians fr partl S/J agnst defts & deft-intrvenr GRNTD, & mot of defts & deft-intrvnr fr S/J DEN; tht Cal Penl Code 326.5 & Rivrside Cnty Ordnce #558 are of no force & effect on & within boundries of Cabazon Indian Reservtn agnst Cabazon Band Mission Indians, members or other persons engaging in, or permittd to be playd, tribally sponsered bingo games. & defts, deft-intervnr hv no authrty or jurisdctn to attempt or enfrce said Cal Penl Code or Rivrside Cnty Ordnce as to bingo games on Cabazon Indian Reservatn, & said defts are hereby perm restraind & enjoind frm tkng steps to enfrce said Penl Code or Cnty Ordnce within boundries of said Resrvatn; tht Cal Penl

DATE	NR.	PROCEEDINGS
		Code 330-31 & Rivrside Cnty Ordnce #331 are void as within said Resrvatn fr members or others frm playing or wagering on tribally sponsrd & sanctnd games of draw poker, lowball draw poker, panguingue or othr card games not prohibitd undr Cal Penl Cde 330-31; said defts perm enjoind frm any attempts ¶ enfrcng said Penl Code or Cnty Ordnce within Cabazon Resrvatn Boundries as to playing of said tribally sponsered, sancd games; tht pltf to recovr costs of suit herein frm defts, deft-intrvnr; pltf shll hv until 30 dys following entry of finl jgmnt on remaing dmge claim to fle & srv a single applic fr atty fees & expenses covring entirety of ths case (ENT 12-10-84) mld notcs.
	42.	ORD tht pltf Cabazon's mot fr partl S/J GRNTD, deft-intrvnr's mot fr S/J DEN; tht pltf shll recvr costs of suit herein & hv to 30 dys followng entry of fnl jgmnt to fle & srv single applic fr atty fees & expenses covrng entirety of case; tht grntng pltf's mot fr partl S/J does not dispose of pltf's claim of damge aganst defts, whch claim shll still be adjudc by ths Crt; Crt hs detrmnd tht there is no just reason fr delay & directs tht ths jgmnt be ent. (ENT 12-10-84) mld notcs.
12/19/84	BC 43.	Fld NOTC OF APPEAL frm ord & jdgmnt ent 12/10/84. forms mailed. Billing letter sent.
12/26/84	sa 44.	Bill of costs set 1-14-84 10 A.M. against defts. (PLACED IN FILE NOT USED).

DATE	NR.	PROCEEDINGS
1/ 2/85	sa	45. Objections to bill of costs. pltf. (PLACED IN FILE NOT USED).
1/ 8/85	sa	46. W/drawl of certificate of waiver of reporters transcript. deft.
*12/26/84	kw	PLACED in file not used Notc of applic to tax costs pltf.
1/ 2/ 85	kw	PLACED in file not used objs to bill of costs deft.

2. DOCKET ENTRIES (U.S. COURT OF APPEALS)

DATE	FILINGS-PROCEEDINGS
1984	
12/27	Docketed cause and entered appearances of counsel. GJB.
1985	
Jan. 10	Filed as of Jan 7, aplts' (RIVERSIDE COUNTY; STATE OF CALIFORNIA) CADS. (DC #CV-83-1117-LEW) (CONFATT) ¼-rmc-
Jan. 10	Filed as of Jan. 7, aplts' (RIVERSIDE COUNTY; STATE OF CALIFORNIA) CADS. (DC #CV-83-3073-LEW) (CONFATT) ¼-rmc-
Mar. 25	Filed Order (CONFATT, SMJ): Prebriefing Conference held 2/27/85; Aplt's represented by Roderick Walston, Rudolf Corona, Jr., Glenn Salter; Aple's represented by Barbara Karshmer, Glenn Feldman, Peter Strong; Aplt granted extension of time to designate rptr's transcript, designation due in D.C. within 10 dys; Aplt's may file designation of Clk's record within 10 dys after certificate of record is transmitted to this ct; Aplt's shall join in single brief under 50 pgs due MAR. 22, 1985; Aple's shall file single brief under 50 pgs due APR. 26, 1985; Aplt's single reply brief under 25 pgs due within 14 dys of service date of Aple's brief; Service on all briefs will be in person or by overnight mail or courier; order subject to reconsideration if opposition filed within 10 dys.
Apr. 2	Filed as of Mar. 22, orig & 15 Appellant's opening briefs (46-pgs.); 5 Excerpts of Rec. (in 2 vols.). 3/22 Express Mail. ec
Apr. 2	Filed as of 3/22, orig & 33 Appellants' Suggestion For Hearing En Banc; Memorandum in support. 3/22 Express Mail. (Civatt w/copy of opening brief; 2 copies of Suggestion to En Banc Coordinator) ec

DATE	FILINGS-PROCEEDINGS
Apr. 2	Sent ltr to cnsl re case will be heard in due course by a panel unless the court votes to hear it en banc. ec
Apr. 3	Filed, as of Mar. 25, ORIG & 15 COPIES AMICUS BRIEF (State of Washington) 3/22. db
May 2	Filed as of April 29, Orig & 15 copies aple's briefs (50 pgs) & 5 supplemental excerpts of record. 4/26. pw
May 8	FILED AS OF APR. 29, CERTIFICATE OF RECORD. 4/25/85. tu
May 13	FILED ORIG & 15 COPIES APLTS' REPLY BRIEF (24 pgs) 5/10. db
May 14	Sent set of briefs on appeal to Civatt, re: General Order 5.2(a). db
May 28	Rec'd as of May 20, notice of change of address from Glenn M. Feldman, Esq., counsel for Cabazon Band of Mission Indians. 5/14. db
July 20	Recvd, as of July 19, orig only of aplt (State) counsel's ltr of add'l citation & copy of opinion cited in ltr. (no service-counsel notified). jc
July 29	Recvd letter dated July 18, from Roderick E. Walston, re: decision of the federal dist. ct. for the W. Dist. of Michigan in USA vs. Dakota, et al. 7/24. gb
Aug. 6	Recvd letter dated Aug. 5, from Roderick E. Walston, re: amended additional citations. ab
Aug. 15	Received notice denying hearing en banc. jcw
Aug. 27	Filed as of 8/26, State of California and Riverside County mtn requesting taking of Judicial Notice and memorandum of points and authorities in support of. (Panel) 8/23. rmc
Aug. 30	Recvd as of 8/29, ltr dtd 8/26, from Glenn M. Feldman, Esq., counsel for aples responding to

DATE	FILINGS-PROCEEDINGS
	aples' ltr dtd 8/5/85 re: add'l citations. (Panel) 8/26. rmc
Sept. 10	Filed aples' response to aplts' mtn requesting taking of judicial notice. (panel) 8/30. rmc
Sept. 23	FILED AS OF APR. 29, CERT TRANSC OF RECORD ON APPEAL IN TWO VOLUMES, VOL. 1 CLERK'S RECORD (PLDGS); VOL. 2 RPTRS (copy). ec
Sept. 27	Filed order (SR DEP CLK, JC) the aplt's motion to take judicial notice will be considered at the time of oral argument. Counsel should be prepared to address the issue. jcw
Oct. 3	Recvd as of 10/2, ltr dtd 10/1, from George Forman, Esq., counsel for aples re: add' citations. (Panel) 10/1. rmc
Oct. 10	ARGUED & SUBMITTED TO ANDERSON, FARRIS & NELSON, CJJ. Motion to take judicial notice granted. jc
Oct. 29	Recvd as of 10/28, ltr dtd 10/24, from Barbara E. Karshmer, Esq., counsel for aple re: citation of U.S. v. Dakota, et al. (panel) 10/24 (M84-246CA2, W.D. Mich., June 28, 1985). rmc
Nov. 15	Recvd as of 11/14, ltr dtd 11/13, from Roderick E. Walston, Supervising DAG counsel for aplts re: enclosed is a copy of the order of the DC dismissing the claim for money damages of pltf Morongo Band of Mission Indians. (Panel) 11/13. rmc
1986	
Feb. 25	ORDERED OPINION (ANDERSON) FILED & JUDGMENT TO BE FILED & ENTD. vm
Feb. 25	Filed Opinion—AFFIRMED. vm
Feb. 25	Filed & Entered Judgment. vm JS34

DATE	FILINGS-PROCEEDINGS
Mar. 15	Filed as of 3/10, aple's (CABAZON BAND OF MISSION INDIANS) bill of costs. 3/5. rmc
Mar. 17	Filed The State of California, Riverside County, and Ben Cla k notice of appeal to the Supreme Ct. of the U.S. (3/17). rmc
Mar. 21	MANDATE ISSUED W/COSTS. ec
Mar. 28	Filed as of 3/24, aples' mtn to transfer attys' fees to DC. 3/20 (panel). ec
Apr. 7	Filed as of April 3, aplt's opposition to aple's motion to transfer request for attys' fees to DC. (PANEL) 4/2. gb
Apr. 14	Filed State of California, Riverside County & Ben Clark's Amended Notice of Appeal to the Supreme Court of the U.S. (original returned, copy to case file). dmd
Apr. 15	Filed as of 4/8 order (ANDERSON, FARRIS & NELSON) The motion of the aples to transfer the request for attornys' fees to the United States District Court for the Central District of California is GRANTED. vm
Apr. 15	Filed as of 4/8 AMENDED OPINION (ANDERSON, FARRIS & NELSON) (see case file) AFFIRMED. vm
Apr. 21	Recvd as of 4/14, returned as of 4/21, aples' response to aplts' opposition to mtn to transfer request for attys' fees to DC. (moot see order of 4/8) (returned per atty) 4/9. rmc
May 14	Recvd from U.S. Supreme Court notice re filing cert (Apr. 17, 1986, No. 85-1708). ec
June 20	Filed copy of SC order of 6/9/86, the statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. (Panel). jlc

3. COMPLAINTS

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THE CABAZON BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 83-1117-LEW(Tx)

THE CABAZON BAND OF MISSION INDIANS, a federally recognized Indian Tribe,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK, individually and in his official capacity as Sheriff of Riverside County,

Defendants.

AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

Plaintiff Cabazon Band of Mission Indians, for its amended complaint, herein avers:

INTRODUCTION

1. This is a civil action to enjoin the enforcement of two Riverside County Ordinances—involving the playing of poker and bingo—on the Cabazon Indian Reservation; for a declaratory judgment that the County, the County Sheriff and their officers, agents, and employees are without authority to enforce these local ordinances on and within the boundaries of the Cabazon Reservation; and for damages resulting from the improper and unlawful actions of defendants in attempting to enforce the local ordinances in question on the Cabazon Indian Reservation.

THE PARTIES

2. Plaintiff Cabazon Band of Mission Indians (hereinafter "the Cabazon Band" or "the Band") is a federally recognized Indian tribe, the governing body of which is recognized by the Secretary of the Interior. Plaintiff Band has adopted Articles of Association which have been approved by the Sacramento Area Director of the Bureau of Indian Affairs, acting upon authority delegated to him by the Secretary of the Interior. Plaintiff is the beneficial owner of, and exercises sovereignty over, the Cabazon Indian Reservation (hereinafter "Reservation"), compromising approximately 1700 acres in Riverside County, California; legal title to the Cabazon Reservation is held in trust for plaintiff by the United States of America.

3. Defendant County of Riverside is a county of the State of California.

4. Defendant Ben Clark is the Sheriff of Riverside County, and is sued both in his official capacity and as an individual. As County Sheriff, defendant Clark is the highest ranking member of the Sheriff's Department and com-

mands and directs the activities of all other officers of the Riverside County Sheriff's Department.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331, in that the matter in controversy arises under the Constitution and laws of the United States; under 28 U.S.C. § 1362, in that this is an action brought by an Indian tribe with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution and laws of the United States; under 28 U.S.C. §§ 2201-02, in that plaintiffs seek declaratory and injunctive relief; and under 28 U.S.C. § 1343, in that plaintiffs assert a civil rights cause of action under 42 U.S.C. § 1983.

6. Venue lies in this District under 28 U.S.C. § 1391 (b).

FACTUAL ALLEGATIONS

7. Since time immemorial, members of the Cabazon Band of Mission Indians and their ancestors have resided in, used, and occupied the desert areas of the Coacheila Valley in southern California. The present Cabazon Indian Reservation was originally established by Executive Order of President Ulysses S. Grant on May 15, 1876, "for the permanent use and occupancy" of the Cabazon Band. The Reservation was further expanded in 1895 and again in 1910 under the provisions of the California Mission Indians Relief Act of 1891, 26 Stat. 712 I Kappler, *Indian Affairs: Laws and Treaties*, 383-85. That Act also provided that lands so reserved would be held "for the sole use and benefit of the band . . . to which it is issued."

8. Legal title to the lands comprising the Cabazon Indian Reservation is held by the United States, in trust for the beneficial owners, the Cabazon Band of Mission Indians.

9. It is the law and policy of the United States Government to encourage and facilitate the economic development of Indian Reservations by Indian tribes and to foster and promote Indian self-determination by strengthening Indian tribal governments. These policies are set forth, *inter alia,* in § 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476; the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1451 *et seq.*, the Indian Financing Act of 1974, 25 U.S.C. §§ 1451 *et seq.*, the Indian Self-Determination Act of 1975, 25 U.S.C. §§ 450 *et seq.*, the Indian Tribal Governmental Tax Status Act of 1982, P.L. 97-473, 96 Stat. 2607-11, and President Reagan's Statement on Indian Policy, January 24, 1983.

10. In furtherance of these goals and pursuant to its sovereign powers of self-government, the Cabazon Band, on May 24, 1980, lawfully enacted Tribal Ordinance No. 5.7, Regulation of Card Clubs, a copy of which is attached hereto as Plaintiff's Exhibit A.

11. Cabazon Tribal Ordinance No. 5.7 authorizes the establishment of one or more card clubs on and within the boundaries of the Cabazon Indian Reservation, to be owned and operated by the plaintiff Band.

12. The only card games authorized to be played within such tribal card clubs are the games of draw poker, lowball draw poker and panguingue.

13. The games of draw poker, lowball draw poker and panguingue are permitted under California State Law and public policy. These games are played openly and lawfully

in many areas of California, including Lake Elsinore, which, like the Cabazon Indian Reservation, lies within Riverside County.

14. In accordance with both California State Law and Cabazon Tribal Ordinance, the Cabazon Band constructed and, on or about October 16, 1980, began operating a card club on and within the boundaries of the Cabazon Indian Reservation.

15. On October 18, 1980, officers of the Indio City Police Department, alleging jurisdiction over the Cabazon card club, came onto the Cabazon Indian Reservation, arrested over 100 officers, members, employees and non-members of the Cabazon Band, and ordered the card club closed, for allegedly violating a local ordinance of the City of Indio which prohibited poker games.

16. On October 22, 1980, the Cabazon Band filed suit in the United States District Court for the Central District of California. *The Cabazon Band of Mission Indians v. The City of Indio, California, et al.*, No. CV 80-4672 LEW. That suit, which sought declaratory and injunctive relief against the City of Indio, California and the Indio City Police Chief alleged, first that the City of Indio was without jurisdiction over the Cabazon card club because the City had never lawfully annexed the portion of the Cabazon Indian Reservation on which the card club was located. Second, and more generally, the suit alleged that the City was without lawful authority to attempt to enforce local ordinances on the federally-owned Cabazon Indian Reservation.

17. On November 10, 1980, the District Court granted the Cabazon Band's motion for preliminary injunction, permitting the card club to reopen. On May 18, 1981, following

cross-motions for summary judgment, the Court entered judgment for the defendants, but on May 22, 1981, it granted the Cabazon's motion for an injunction pending appeal, allowing the card club to continue operating while an expedited appeal was taken to the Ninth Circuit Court of Appeals.

18. In an opinion filed on December 14, 1982, the Ninth Circuit Court of Appeals reversed the District Court and held that the City of Indio had no authority to enforce its local ordinances on the Cabazon Indian Reservation, inasmuch as the attempted annexation of Cabazon Reservation land by the City in 1970 had been unlawful and, therefore, void *ab initio*. *Cabazon Band of Mission Indians v. City of Indio*, 694 F.2d 634 (9th Cir. 1982). Because it found the City's actions to be unlawful under plaintiff's "annexation" argument, the court of appeals did not rule on the Cabazon Band's broader "lack of jurisdiction" argument.

19. On December 10, 1981, the Cabazon Card Club filed a voluntary petition in bankruptcy, seeking reorganization under Chapter 11 of the Federal Bankruptcy Act. *In re Cabazon Indian Casino*, No. SB 81-03397-WH (United States Bankruptcy Court, C.D. Cal.). Since that time, the Cabazon Band has continued to operate its card club as a "debtor in possession" under federal bankruptcy law.

20. On or about January 28, 1982, the former manager of the Cabazon card club filed an adversary proceeding in the Bankruptcy Court, alleging improper discharge from his managerial position and seeking substantial monetary damages therefore. Subsequently, the debtor Cabazon filed a cross-complaint against the former manager alleging that he had failed to properly account for, report or deposit all

monies under his management and control and seeking $250,000 in damages. On December 6, 1982, the Bankruptcy Court granted the Cabazon Band's motion for summary judgment and dismissed the former manager's complaint. The Cabazon Band's cross-complaint is currently pending.

21. As a "debtor in possession," the Cabazon Band must report all card club income and expenditures to the Bankruptcy Court through weekly and monthly reports to the United States Trustee. All income, except that necessary to pay current bills and fund essential tribal programs and services, is being retained in order to repay creditors under an approved repayment plan.

22. As an additional revenue generating enterprise, the Cabazon Band has duly enacted Cabazon Tribal Ordinance No. 5.6, Regulation of Bingo Games, a copy of which is attached hereto as Plaintiff's Exhibit B. Pursuant to this ordinance, the Cabazon Band is presently constructing a building on its reservation to be used as a bingo parlor. The building will be completed, and it is expected that tribally-sponsored bingo games will begin, on or about March 1, 1983.

23. On December 21, 1982, the Ninth Circuit Court of Appeals decided *Barona Group of Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982). In that case, the court squarely held that the Sheriff of San Diego County could not enforce state and county bingo laws against tribally-sponsored bingo games on a California Indian reservation.

FIRST CLAIM FOR RELIEF

24. Plaintiff repeats and realleges the allegations of paragraphs 1-23 as if fully set forth herein.

25. On February 15, 1983, at approximately 5:30 p.m., card games of draw poker, lowball draw poker and panguingue, which are lawful under the laws of the State of California and the ordinances of the Cabazon Band, were in progress within the Cabazon card club.

26. At the time and date aforesaid, 16 officers of the Riverside County Sheriff's Department, acting under the direction and command of defendant Clark, came onto the Cabazon Indian Reservation and entered the card club. An officer announced that everyone was to remain seated and that all persons present would be cited for illegal gaming.

27. Officers of the Riverside County Sheriff's Department thereupon issued citations to Brenda James, the First Vice Chairman of the Cabazon Band, Charles Welmas, the Second Vice Chairman of the Cabazon Band, and approximately 30 other members, employees and non-members of the Cabazon Band, alleging violations of Riverside County Ordinance Number 331, a copy of which is attached hereto as Plaintiff's Exhibit C. The officers also seized and confiscated $3,000 in cash, certain files and records and a substantial amount of personal property belonging to the Cabazon Band, including all of the cards and poker chips on the premises.

28. An officer who identified himself as Detective Martin stated his intention to continue to enforce the Riverside County Ordinance, by means of arrest, as long as the Cabazon card club continued to operate. As a result, the Cabazon card club immediately ceased operation.

29. Defendants are without lawful authority or jurisdiction to enforce or attempt to enforce local ordinances of Riverside County on and within the federally-owned Caba-

zon Indian Reservation, which ordinance seeks to regulate, condition, interfere with or prohibit conduct which is permitted under the laws and public policy of the State of California and the ordinances of the Cabazon Band.

30. By enactment of Public Law 83-280, 18 U.S.C. § 1162, 28 U.S.C. § 1360 (hereinafter "P.L. 280"), the Congress of the United States granted to five states, including California, the limited right to enforce certain civil and criminal state laws on Indian Reservations located within these states. P.L. 280, by defining the limits of the State of California's jurisdiction over the Cabazon Indian Reservation, necessarily preempts and reserves to the federal government or the Cabazon Band jurisdiction not so granted.

31. P.L. 280 is not a grant of jurisdiction authorizing county governments to enforce local ordinances on Indian reservations in California which would regulate, condition, interfere with or prohibit conduct which is lawful under California state law and public policy and which is authorized and regulated by tribal ordinance. Riverside County Ordinance Number 331 is not a "law of the State" of California within the meaning of P.L. 280, and, therefore, may not be enforced on the Cabazon Indian Reservation.

32. The Cabazon card club is the primary source of tribal revenue for the Cabazon Band. In the event that the Cabazon card club remains closed, the Cabazon Band would be unable to fund its tribal programs and services. Moreover, in the event of continued closure, the U.S. Trustee would be empowered to convert the present Chapter 11 reorganization to a "straight bankruptcy" under

Chapter 7. This would result in the forced sale of all card club equipment and property for the benefit of creditors and would make it possible for the Cabazon Band to reopen its card club enterprise in the future.

33. Defendants' unlawful and unauthorized conduct in attempting to enforce the local ordinance of the County of Riverside on the Cabazon Indian Reservation (a) has resulted in the unlawful arrest of officers, members, employees and non-members of the Cabazon Band; (b) caused the card club to shut down and cease operations, depriving plaintiff of lawful and vitally needed economic revenues; and (c) has violated the rights of the Cabazon Band to self-determination and to exercise the rights and privileges of governance over the Cabazon Indian Reservation, subject only to such Federal or State laws as may be applicable.

34. Plaintiff has no adequate remedy at law for the averred actions of defendants.

SECOND CLAIM FOR RELIEF

35. Plaintiff repeats and realleges the allegations of paragraphs 1-34 as if fully set forth herein.

36. The card games of draw poker, lowball draw poker and panguingue are played and wagered on in Lake Elsinore.

37. Lake Elsinore, like the Cabazon Indian Reservation, is located within the County of Riverside.

38. The defendants have made no effort to enforce Riverside County Ordinance No. 331 against persons engaging in, or permitting to be played, the games of draw poker, lowball draw poker and panguingue in Lake Elsinore.

39. By enforcing Riverside County Ordinance No. 331 against plaintiff, while failing to enforce the ordinance against identical conduct engaged in by others, defendants have deprived the Cabazon Band of the equal protection of the law, in violation of the Constitution of the United States.

40. Plaintiff has no adequate remedy at law for the averred actions of defendants.

THIRD CLAIM FOR RELIEF

41. Plaintiff repeats and realleges the allegations of paragraphs 1-40 as if fully set forth herein.

42. Despite the clear mandate of *Barona Group of the Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), defendant Clark has publicly stated that he will not permit tribally-sponsored bingo games to be conducted on the Cabazon Indian Reservation and that he will close down the Cabazon bingo parlor if it attempts to open.

43. Defendant Clark's threat to enforce state and county bingo laws, including Riverside County Ordinance Number 558, a copy of which is attached hereto as Plaintiff's Exhibit D, on the Cabazon Indian Reservation is unlawful and constitutes impermissible infringement of the tribal sovereignty of plaintiff Cabazon Band. Such action will deprive plaintiff of needed tribal revenues and will violate the Cabazon Band's lawful right to self-determination, self-governance and reservation economic development, as secured to it under the Constitution, laws and policies of the United States.

44. Plaintiff has no adequate remedy at law for the averred actions of defendants.

FOURTH CLAIM FOR RELIEF

45. Plaintiff repeats and realleges the allegations of paragraphs 1-44 as if fully set forth herein.

46. Under Articles 1, § 8, cl. 2 and Article II, § 2, cl. 2 of the United States Constitution, the regulation of Indian affairs is entrusted to the federal government, to the exclusion of the states.

47. The Constitution thus secures to plaintiff Cabazon Band an immunity from state law except to the extent that Congress expressly authorizes the application of state law on the Reservation.

48. The averred actions of defendants were taken without congressional authorization and have, therefore, deprived the plaintiff of rights and immunities secured to it by the Constitution of the United States.

49. Plaintiff has no adequate remedy at law for the averred actions of defendants.

FIFTH CLAIM FOR RELIEF

50. Plaintiff repeats and realleges the allegations of paragraphs 1-49 as if fully set forth herein.

51. The Cabazon Band exercises inherent sovereignty and the right of self-governance over the Cabazon Indian Reservation.

52. The inherent sovereignty of Indian tribes has been recognized by the United States government as part of the federal common law.

53. The averred actions of the defendants impermissibly infringe on the inherent tribal sovereignty of plaintiff, depriving it of rights secured to it under the federal common law.

54. Plaintiff has no adequate remedy at law for the averred actions of defendants.

SIXTH CLAIM FOR RELIEF

55. Plaintiff repeats and realleges the allegations of paragraphs 1-54 as if fully set forth herein.

56. The averred actions of defendants are unlawful in that they are preempted under P.L. 280, the California Mission Indians Relief Act of 1891, and other federal laws and policies promoting tribal self-government and reservation economic development.

57. Plaintiff has no adequate remedy at law for the averred actions of defendants.

SEVENTH CLAIM FOR RELIEF

58. Plaintiff repeats and realleges the allegations of paragraphs 1-54 as if fully set forth herein.

59. The averred acts of defendants constitute an attempt by defendants, acting under color of state law, to unlawfully expand and extend the jurisdiction of the County of Riverside over plaintiff Indian tribe, tribal trust lands and other tribal assets and property. Such acts of defendants are violative of the United States Constitution and the clear mandate of federal laws and policies regarding the inherent soverign rights of plaintiff, and constitute deprivation of rights, privileges and immunities of plaintiff secured by the United States Constitution, laws and policies, all in violation of 42 U.S.C. § 1983.

WHEREFORE plaintiff prays:

1. That the Court enter judgment declaring that Riverside County Ordinance Number 331 is of no force and effect on and within the boundaries of the Cabazon Indian Reservation;

2. That the Court enter judgment declaring that defendant Clark is without authority and jurisdiction to enforce or attempt to enforce Riverside County Ordinance Number 331 on and within the boundaries of the Cabazon Indian Reservation;

3. That the Court enter a temporary restraining order, preliminary injunction pending the entry of a final judgment, and a permanent injunction enjoining defendants County of Riverside, Clark and their successors, assigns, officers, agents, employees, attorneys, and all other persons acting or attempting to act on their behalf, or in concert with them from taking any steps to enforce or to attempt to enforce Riverside County Ordinance Number 331 on and within the boundaries of the Cabazon Indian Reservation against persons engaging in, or permitting to be played, the card games of draw poker, lowball draw poker, and panguingue;

4. That the Court enter an order directing defendants to return to plaintiff forthwith all monies, files, records, equipment and property belonging to the Cabazon Band of Mission Indians which was seized by defendants in the Cabazon card club on February 15, 1983;

5. That the Court enter judgment declaring that Riverside County Ordinance Number 558 is of no force and effect on and within the boundaries of the Cabazon Indian Reservation;

6. That the Court enter judgment declaring that defendant Clark is without authority or jurisdiction to enforce or attempt to enforce Riverside County Ordinance Number 558 on and within the boundaries of the Cabazon Indian Reservation;

7. That the Court enter a temporary restraining order, preliminary injunction pending the entry of a final judgment, and a permanent injunction enjoining defendants County of Riverside, Clark and their successors, assigns, officers, agents, employees, attorneys, and all other persons acting or attempting to act on their behalf, or in concert with them from taking any steps to enforce or to attempt to enforce Riverside County Ordinance Number 558 against persons engaging in, or permitting to be played, the game of bingo on and within the boundaries of the Cabazon Indian Reservation.

8. That the Court award plaintiffs damages in the amount of $12,500,000 or such other amount as may be proven at trial for deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States pursuant to 42 U.S.C. § 1983.

9. That plaintiff be awarded its costs and reasonable attorneys fees pursuant to 42 U.S.C. § 1988 and other applicable federal law.

10. That the Court grant such other and further relief as may be deemed just and proper.

DATED: June 30, 1983.

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

By /s/ Glenn M. Feldman
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By /s/ Peter H. Strong by GMF
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV-83-1117 (LEW) (TX)

CABAZON BAND OF MISSION INDIANS,
A Federally Recognized Indian
Tribe,

Plaintiff,

v.

COUNTY OF RIVERSIDE, STATE OF
CALIFORNIA, et al.,

Defendants.

No. CV-83-3073 (LEW)

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

COUNTY OF RIVERSIDE and SHERIFF
BEN CLARK,

Defendants,

and

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

JURISDICTION AND VENUE

1. This court has jurisdiction over this action under 28 U.S.C. § 1331(a) in that plaintiff's claims arise under the Constitution and laws of the United States; 28 U.S.C. § 1343, in that plaintiff seeks redress against the deprivation under color of State law of and/or ordinance of rights, privileges or immunities secured under the Constitution and/or laws of the United States; and 28 U.S.C. § 1362, in that plaintiff is an Indian Tribe with a governing body recognized by the Secretary of the Interior, and plaintiff's claim arise under the Constitution and laws of the United States. Venue is properly in the Central District of California in that Plaintiff and defendant County are located and plaintiff's claims arise in said District.

PARTIES

2. Plaintiff Morongo Band of Mission Indians (hereinafter referred to as "the Band") is an Indian Tribe with a governing body duly recognized by the Secretary of the Interior (hereinafter referred to as "the Secretary") and recognized by the Secretary as maintaining a government-to-government relationship with the United States. The Band is the beneficial owner of the Morongo Indian Reservation (hereinafter referred to as "the Reservation"), which consists of approximately 32,000 acres of land held in trust for the Band by the United States pursuant to a series of Presidential Executive Orders, a Presidential Proclamation, a federal statute and a deed.

Trust patents to the Reservation were issued pursuant to the Mission Indian Relief Act of January 12, 1891, 26 Stat. 712, as amended by 34 Stat. 1022, on December 14, 1908 and January 23, 1911.

3. Defendant County of Riverside (hereinafter referred to as "the County") is a political subdivision of, and is organized under the laws of the State of California. The Reservation is within the exterior boundaries of the County of Riverside.

4. Defendant Ben Clark is the duly-elected Sheriff of the County of Riverside, and in that capacity is vested with the authority to enforce all laws of the State of California and the County of Riverside. Defendant Clark is sued in his official capacity.

5. The State of California has intervened as a defendant in the action and claims an interest in the subject matter of this action.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

6. The Morongo Band of Mission Indians has approximately 750 enrolled members, about 300 of whom reside on the Reservation. Many Band members are unemployed or otherwise poverty-stricken.

7. Of the Reservation's 32,254 acres, less than one square mile, consisting of a strip of land lying along the northern side of Interstate Highway 10, which passes through the Reservation, is suitable for economic development.

8. By Ordinance adopted on April 23, 1983, the Morongo Band of Mission Indians determined that the

establishment of an exclusive Tribal Bingo Enterprise would promote the health, welfare and general interests of the Band by, *inter alia*, providing a source of revenue to the Band for the provision of governmental services needed by its members, as well as a source of employment for Tribal members. The Band further determined that because the Band lacked the capital and the management expertise to build a Bingo facility, establish the Enterprise and manage it on a profitable basis, it would be necessary to retain the services of a manager for its Enterprise. The Band's ordinance prohibits the operation on the reservation of any Bingo enterprise other than the Morongo Tribal Bingo Enterprise; regulates the days and hours during which Bingo games may be conducted, the amount of prize money which may be awarded, the minimum age of participants, and restricts the use of the Band's Bingo revenues to "the support of programs to promote the health, education and general welfare" of the Band. Said ordinance has been submitted to the United States Department of Interior, Bureau of Indian Affairs for approval.

9. On April 23, 1983, the Morongo Band of Mission Indians voted to approve an agreement with Justus Enterprises under which the Band retained the services of Justus as the Band's agent for the purpose of managing the Morongo Tribe's Bingo Enterprise.

10. When this action was filed, the Morongo Tribal Bingo Enterprise was located on a parcel of Reservation land which has been allotted to a Tribal member; when the Band commenced its Bingo operation, the Band was renting the Enterprise facilities from that Tribal member.

11. On or about February 9, 1983, the Band terminated its agreement with Justus Enterprises.

12. On May 17, 1984, the Band entered into a management agreement with CBA Development Co., Inc., pursuant to which a new Bingo facility will be constructed on Tribal land, the Band will receive a seventy-five percent (75%) share of the Enterprise profits and the Band will be actively involved in the formulation and implementation of the management policies of the Enterprise. This management agreement has been submitted to the United States Department of Interior, Bureau of Indian Affairs for approval. A copy of said agreement is attached as Exhibit A hereto.

13. When the Band initiated its Tribal Bingo Enterprise, defendants County of Riverside and Sheriff Clark threatened to arrest the operators and patrons of the Enterprise, as well as to close down the Enterprise, because the Band had not secured a license from the County pursuant to Riverside County Ordinance No. 558, and because the operation of the Enterprise otherwise allegedly violated the provisions of California Penal Code § 326.5.

14. As authorized under the Morongo Tribal Bingo Ordinance, and as operated pursuant thereto, the Morongo Tribal Bingo Enterprise has increased employment among Tribal members and has generated Tribal revenue which shall be used by the Band to support programs to promote the health, education, and general welfare of the members.

15. The Morongo Tribal Bingo Enterprise does not differ substantially or materially from the Bingo enterprise of the Barona Group of the Capitan Grande Band

of Mission Indians on that Band's Reservation in San Diego County, California.

FIRST CLAIM

16. Plaintiff realleges each of the allegations set forth in Paragraphs 1 through 14 above, and by this reference incorporates each and every such allegation herein as if set forth in full.

17. Defendants have no jurisdiction to enforce or apply California Penal Code § 326.5 and Riverside County Ordinance No. 558 to the Morongo Tribal Bingo Enterprise in the absence of the consent of the United States. Such consent never has been given and thus defendants lack jurisdiction or authority to prosecute or threaten to prosecute, cite or threaten to enforce either California Penal Code § 326.5 or Riverside County Ordinance No. 558 upon the Morongo Indian Reservation or against the operators or patrons of the Morongo Tribal Bingo Enterprise.

18. An actual controversary exists beween plaintiff and defendants, in that plaintiff contends that its past and intended future conduct of Bingo games on its Reservation without securing from defendant County a license to do so, and otherwise not conforming its operation of Bingo games in every respect to the requirements of California Penal Code § 326.5 and Riverside County Ordinance No. 558 is not subject to regulation or prohibition by defendants, while defendants contend that they possess jurisdiction to regulate or prohibit the operation of the Morongo Tribal Bingo Enterprise pursuant to California Penal Code § 326.5 and Riverside County Ordinance No. 558. In addition, plaintiff contends that its operation of

its Tribal Bingo Enterprise is not contrary to the public policy of the State which allows bingo and other gambling operations, including horseracing, to occur within the state, while defendants contend that said Tribal Bingo Enterprise is against the public policy of the State.

19. Unless enjoined therefrom, defendants will interfere with or prevent operation of the Morongo Tribal Bingo Enterprise by threatening to arrest or arresting, threatening to cite or citing, and otherwise threatening, harassing and intimidating the operators of the Morongo Tribal Bingo Enterprise and the members of the public who actually or potentially would patronize said Enterprise.

WHEREFORE, plaintiff prays as hereinafter set forth.

SECOND CLAIM

20. Plaintiff realleges each of the allegations set forth in Paragraphs 1-14 above and by this reference incorporates each such allegations herein as if set forth in full.

21. Defendant's enforcement or threatened enforcement of California Penal Code § 326.5 and/or Riverside County Ordinance No. 558 has been under color of State law, and has deprived, is depriving and will deprive plaintiff in its own right and on behalf of its members, economic benefits, rights, privileges and immunities secured by the Constitution and laws of the United States.

22. Defendants' threats to enforce California Penal Code § 326.5 and Riverside County Ordinance No. 558 against the Morongo Tribal Bingo Enterprise, its opera-

tors and its patrons were and continued to be made with knowledge that the United States Court of Appeals for the Ninth Circuit has declared said laws to be inapplicable to a Tribal Bingo enterprise operating on an Indian Reservation in California, and thus said threats were made in a bad faith effort to prevent plaintiff and its members from engaging in Reservation-based commerce, to discriminate against plaintiff and its members in favor of non-Indian groups operating Bingo games under license from defendant County and to intimidate and punish plaintiff for exercising its federally-protected sovereign rights, privileges, and immunities as a federally-recognized Indian Tribe.

23. By reason of the acts alleged in Paragraphs 20 and 21 above, plaintiff has been damaged in an amount as yet unascertained, and has been forced to retain and compensate legal counsel to protect its federally-protected and adjudicated right to operate its Bingo Enterprise without harassment or intimidation by defendants.

24. Unless enjoined by this court, defendants will continue to threaten to enforce and/or actually will enforce California Penal Code § 326.5 and Riverside County Ordinance No. 558 against plaintiff Band, its Tribal Bingo Enterprise and the operators and patrons thereof, thereby depriving plaintiff and its members of federally-protected rights, privileges and immunities, for which deprivation there exists no plain speedy or adequate remedy at law.

25. An actual controversy exists between plaintiff and defendants in that plaintiff contends that enforcement of California Penal Code § 326.5 and Riverside County

Ordinance No. 558 deprives plaintiff and its members of rights, privileges and immunities secured by the Constitution and laws of the United States, and thus that Penal Code § 326.5 and Riverside County Ordinance No. 558 may not be enforced or applied against the Morongo Tribal Bingo Enterprise while defendants deny that enforcement of said statute and ordinance deprive plaintiff and its members of any federally-secured rights, privileges and immunities, and thus may be fully enforced and applied against the Morongo Tribal Bingo Enterprises.

WHEREFORE, plaintiff prays as follows:

Pursuant to its First Claim:

1. That the Court enter judgment in favor of plaintiff declaring that defendants County of Riverside, Sheriff Ben Clark, and the State of California are without jurisdiction to enforce California Penal Code § 326.5 and/or Riverside County Ordinance No. 558 against the Morongo Band of Mission Indians, the Morongo Tribal Bingo Enterprise, or the operators or patrons of said Enterprise;

2. That the court enter judgment preliminarily and permanently enjoining defendants County of Riverside, Sheriff Ben Clark, the State of California, their agents, employees and all others in concert with them or at their direction or control from enforcing or threatening to enforce California Penal Code § 326.5 and/or Riverside County Ordinance No. 558 against the Morongo Band of Mission Indians, the Morongo Tribal Bingo Enterprise or the operators or patrons of said Enterprise.

Pursuant to its Second Claim:

1. That the court enter judgment in favor plaintiff declaring that defendants' threatened and/or actual enforce-

ment of California Penal Code § 326.5 and Riverside County Ordinance No. 558 has been color of State law and has deprived and will deprive plaintiff and its members of rights, privileges and immunities secured to plaintiff and its members under the Constitution and laws of the United States;

2. That the court enter judgment in favor of plaintiff preliminarily and permanently enjoining defendants County of Riverside and Sheriff Ben Clark, the State of California, their agents, employees and all others in concert with them or at their direction or control from threatening to enforce or actually enforcing Penal Code § 326.5 and Riverside County Ordinance No. 558 against plaintiff Morongo Band of Mission Indians, the Morongo Tribal Bingo Enterprise, or the operators or patrons of said Enterprise.

3. That the court enter judgment in favor of plaintiff Morongo Band and against defendants, jointly and severally awarding said plaintiff damages according to proof, and reasonable attorneys' fees and expenses.

PURSUANT TO BOTH CLAIMS

1. That the court award plaintiff reasonable attorneys' fees, expenses and costs of suit;

2. That the court grant such other relief as may be just and appropriate.

Dated: June 18, 1984.

FRAMPTON, KARSHMER & KESSELMAN

By: /s/ Barbara E. Karshmer
Attorney for Plaintiff

4. ANSWERS

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 83-1117-LEW-Kx

THE CABAZON BAND OF MISSION INDIANS, a federally recognized Indian Tribe,

Plaintiff,

vs.

THE COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK, individually and in his official capacity as Sheriff of Riverside County,

Defendants.

ANSWER OF DEFENDANTS TO AMENDED COMPLAINT

Defendants answer the allegations of the Amended Complaint as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

Defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 26, 28; defen-

dants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10, 11, 12, 19, 20, 21, 32 and deny said allegations upon said basis; and defendants deny each and every allegation contained in paragraphs 14, 25, 29, 33, 34, 39, 40, 42, 43, 44, 46, 47, 48, 49, 53, 54, 56, 57 and 59. In response to paragraph 13, defendants deny that the games of draw poker, lowball draw poker and panguingue are permitted under California state law and public policy in the County of Riverside, but do admit that those games are played in some areas of California, including the City of Lake Elsinore. In response to paragraph 27, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that they seized all of the cards and poker chips on the premises, but defendants admit the other allegations of this paragraph insofar as they are consistent with the Return to the Search Warrant filed with the Superior Court of the County of Riverside. In response to paragraph 30, defendants admit that P. L. 280 granted California the right to enforce certain civil and criminal state laws on Indian reservations, but defendants deny each and every other allegation contained therein. In response to paragraphs 36, 37 and 38 defendants admit those allegations as to the City of Lake Elsinore, but defendants deny each and every other allegation contained therein. In response to paragraphs 51 and 52 defendants admit that the Band exercises limited sovereignty and right of self-governance, but defendants deny each and every other allegation contained therein.

THIRD DEFENSE

Defendants' actions or omissions were the result of an exercise of good faith, probable cause, and/or a mistake of law or fact.

FOURTH DEFENSE

Defendants are immune from any liability.

WHEREFORE, defendants pray that plaintiff take nothing herein and judgment be entered in favor of defendants and against plaintiff, and that defendants be awarded their costs of suit and defense expenses.

Dated: August 15, 1983

GERALD J. GEERLINGS, County Counsel
PETER H. LYONS, Principal Deputy
GLENN R. SALTER, Deputy

By /s/ GLENN R. SALTER
Attorneys for Defendants

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiffs,

vs.

COUNTY OF RIVERSIDE, a political subdivision of the State of California; BEN CLARK, in his official capacity as Sheriff of the County of Riverside,

Defendants.

ANSWER OF DEFENDANTS

Defendants answer the allegations of the Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

Defendants admit the allegations contained in paragraphs 4, 5, 11 and 12; and defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3, 6, 7, 8 and 9, and deny said allegations upon said basis. In response to paragraph 10, defendants admit that California Penal Code § 326.5 and Riverside County Ordinance No. 558 prohibit the game of bingo except as expressly allowed, that sponsors of bingo games must obtain a county license, that the Morongo Band has not applied for or obtained a license from the County, and that the tribal bingo ordinance is contrary to the terms of state law, including local ordinance; however, except as expressly admitted, defendants deny each and every allegation contained therein. In response to paragraph 13, defendants admit that unless restrained and enjoined, defendants will attempt to enforce state law, including local ordinance, against the bingo enterprise; however, except as expressly admitted, defendants deny each and every allegation contained therein.

THIRD DEFENSE

Defendants' actions or omissions were the result of an exercise of good faith, probable cause, and/or a mistake of law or fact.

FOURTH DEFENSE

Defendants are immune from any liability.

WHEREFORE, defendants pray that plaintiff take nothing herein and judgment be entered in favor of defendants and against plaintiff, and that defendants be awarded their costs of suit and defense expense.

Dated: June 6, 1983

GERALD J. GEERLINGS, County Counsel
PETER H. LYONS, Principal Deputy
GLENN R. SALTER, Deputy County Counsel

By /s/ GLENN R. SALTER
Attorneys for Defendants

5. ANSWERS IN INTERVENTION

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of the State of California

RUDOLF CORONA, JR.
Deputy Attorney General

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Attorneys for State of California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 83-1116-LEW-Kx

THE CABAZON BAND OF MISSION INDIANS, a federally recognized Indian Tribe,

Plaintiff,

v.

COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK, individually and in his official capacity as Sheriff of Riverside County,

Defendants.

PROPOSED ANSWER IN INTERVENTION

The intervenor, State of California, answers the amended complaint herein as follows:

1. Intervenor admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 26, 28; intervenor alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10, 11, 12, 19, 20, 21, 32 and denys said allegations upon said basis; and intervenor denys each and every allegation contained in paragraphs 14, 25, 29, 33, 34, 39, 40, 42, 43, 44, 46, 47, 48, 49, 53, 54, 56, 57 and 59.

2. In response to paragraph 13, intervenor denys that the games of draw poker, lowball draw poker and panguingue are permitted under California state law and public policy in the County of Riverside, but admits that those games are played in some areas of California, including the City of Lake Elsinore.

3. In response to paragraph 27, intervenor alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegation that the County of Riverside seized all of the cards and poker chips on the premises, but intervenor admits the other allegations of this paragraph insofar as they are consistent with the Return to the Search Warrant filed with the Superior Court of the County of Riverside.

4. In response to paragraph 30, intervenor admits that Public Law 280 granted it the right to enforce certain civil and criminal state laws on Indian reservations, but intervenor denys each and every other allegation contained therein.

5. In response to paragraphs 36, 37 and 38 intervenor admits those allegations as to the City of Lake Elsinore, but intervenor denys each and every other allegation contained therein.

6. In response to paragraphs 51 and 52 intervenor admits that the Band exercises limited sovereignty and right of self-governance, but intervenor denys each and every other allegation contained therein.

RELIEF

WHEREFORE, Intervenor State of California respectfully prays that this Court:

A. Deny the declaratory relief sought by the plaintiffs;

B. Deny the temporary restraining order and preliminary and permanent injunctions sought by the plaintiffs;

C. Deny all further relief sought by the plaintiffs; and

D. Grant judgment in favor of the defendant and intervenor State of California, and grant such further relief as may be proper in the premises.

DATED: October 31, 1983

JOHN K. VAN DE KAMP, Attorney General
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RUDOLF CORONA, JR.,
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (TX)

CABAZON BAND OF MISSION INDIANS, A Federally Recognized Indian Tribe,

Plaintiff,

v.

COUNTY OF RIVERSIDE; STATE OF CALIFORNIA,

Defendants,

AND

THE STATE OF CALIFORNIA,

Defendant-Intervencr.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

COUNTY OF RIVERSIDE; STATE OF CALIFORNIA,

Defendants.

ANSWER OF DEFENDANTS COUNTY OF RIVERSIDE AND BEN CLARK AND DEFENDANT IN INTERVENTION STATE OF CALIFORNIA TO THE FIRST AMENDED AND SUPPLEMENTAL COMPLAINT OF MORONGO BAND OF MISSION INDIANS

(Filed January 31, 1984)

Defendants and defendant in intervention answer the allegations of the First Amended and Supplemental Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against defendants and defendant in intervention upon which relief can be granted.

SECOND DEFENSE

Defendants and defendant in intervention admit the allegations contained in paragraphs 3, 4, 5, 13 and 18 and defendants and defendant in intervention deny each and every allegation contained in paragraphs 17, 21, 22 and 23; and defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 6, 7, 8, 9, 10, 11, 12, 14, 15 and deny said allegations upon said basis. In response to paragraphs 19 and 24, defendants admit that unless restrained and enjoined, defendants will attempt to enforce state law, including local ordinance, against the bingo enterprise; however, except as expressly admitted, defendants deny each and every allegation contained therein. In response to paragraphs 16 and 20, defendants and defendant in intervention incorporate all of their admissions, allegations and denials asserted in this Answer.

THIRD DEFENSE

The actions or omissions of defendants and defendant in intervention were the result of an exercise of good faith, probable cause, and/or a mistake of law or fact.

FOURTH DEFENSE

Defendants and defendant in intervention are immune from any liability.

WHEREFORE, defendants and defendant in intervention pray that plaintiff take nothing herein and judgment be entered in favor of defendants and defendant in intervention and against plaintiff, and that defendants and defendant in intervention be awarded their costs of suit and defense expense.

Dated:

GERALD J. GEERLINGS, County Counsel
PETER H. LYONS, Principal Deputy
GLENN R. SALTER, Deputy County Counsel

By .....
Attorneys for Defendant

JOHN K. VAN DE KAMP, Attorney General
of the State of California
RODERICK E. WALSTON
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Deputy Attorneys General

By .....
Attorneys for Defendant-Intervenor

6. DISTRICT COURT ORDER AND JUDGMENT

[The Order and Judgment of the District Court are reprinted at pages 12-18 of the Appendix attached to the Jurisdictional Statement.]

7. NINTH CIRCUIT DECISION

[The Decision of the Ninth Circuit Court of Appeals is reprinted at pages 1-11 of the Appendix attached to the Jurisdictional Statement.]

8. STIPULATION (CABAZON)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (Tx)

THE CABAZON BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
and BEN CLARK
Defendants,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
Defendant,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

AGREED UPON STATEMENT OF UNCONTROVERTED FACTS AS BETWEEN PLAINTIFF CABAZON BAND OF MISSION INDIANS, DEFENDANTS AND DEFENDANT-INTERVENOR TO BE USED IN CROSS-MOTIONS FOR SUMMARY JUDGMENT

Pursuant to the proposed schedule presented to and approved by the Court on February 13, 1984, it is hereby stipulated by and between Plaintiff Cabazon Band of Mission Indians ("Cabazon Band"). and Defendants County of Riverside, California and Ben Clark, Sheriff of Riverside County, and Defendant-Intervenor, State of California, through their respective counsel, that the following facts, while not admitted, shall be accepted as true and correct for purposes of this action only and shall be used by the parties as the basis for cross-motions for summary judgment. It is understood and agreed, however, that this Stipulation not be construed as a concession by either party of the relevancy or materiality of any of the facts contained herein and the parties expressly reserve the right to argue relevancy or materiality of any of the facts stipulated herein to be true.

1. Plaintiff Cabazon Band of Mission Indians is a federally recognized Indian Tribe, with a governing body recognized by the Secretary of the Interior. The Cabazon Band has enacted Articles of Association which have been approved by the Area Director, Bureau of Indian Affairs,

under authority delegated to him by the Secretary of the Interior. The Band is listed by the Secretary of the Interior in the Federal Register as having a government-to-government relationship with the United States. 46 Fed. Reg. pp. 35360, 35361, July 8, 1981.

2. Defendant County of Riverside is a County of the State of California. Riverside County has a population of less than 4 million persons.

3. Defendant Ben Clark is the Sheriff of Riverside County, California. He is the highest ranking member of the Sheriff's Department and commands and directs the activities of all other officers of the Riverside County Sheriff's Department.

4. Defendant-intervenor State of California is a state of the United States of America.

5. The Cabazon Indian Reservation consists of approximately 1,700 acres of land in three separate parcels located in Riverside County, California. The Reservation contains no known natural resources, such as coal, oil or timber and lies in the desert region of the Coachella Valley near the cities of Mecca, Thermal, Coachella and Indio. The Cabazon Band presently has 25 enrolled members. The Reservation was initially established by Executive Order of President Ulysses S. Grant on May 15, 1876. The Reservation was expanded by Executive Order in 1891 under the provisions of the Mission Indian Relief Act of 1891, 26 Stat. 712.

6. Legal title to the lands comprising the Cabazon Indian Reservation is held by the United States of America, in trust for the beneficial owner, the Cabazon Band of Mission Indians.

7. Under Section 6(A)(7) of its Articles of Association, the General Council of the Cabazon Band is empowered "to manage the economic affairs of the Band and to establish and operate such commercial enterprises as it may deem to be for the benefit of the Band."

8. Under Section 6(A)(10) of its Articles of Association, the General Council of the Cabazon Band is empowered "to take such actions as are necessary by the enactment of codes, ordinances and resolutions or by any other means to carry into effect any of the enumerated or reserved powers of the Band."

9. Pursuant to the tribal powers referred to in paragraphs 7 and 8, above, the Cabazon General Council on May 24, 1980, duly enacted Cabazon Tribal Ordinance No. 5.7, Regulation of Card Clubs. A copy of said Ordinance is attached hereto as Exhibit A.

10. Cabazon Tribal Ordinance No. 5.7 authorizes the establishment of one or more card clubs on and within the boundaries of the Cabazon Indian Reservation, to be owned and operated by the Cabazon Band.

11. The only card games authorized to be played within such tribal card clubs under the Ordinance are the games of draw poker, lowball draw poker, and panguingue.

12. The playing of and wagering on the card games of draw poker, lowball draw poker, and panguingue are not prohibited under California Penal Code §§ 330-331.

13. Riverside County has duly enacted County Ordinance No. 331, which prohibits the playing of and wagering on the card games of draw poker, lowball draw poker and panguingue.

14. The City of Lake Elsinore, which is an incorporated city within Riverside County, has enacted a municipal ordinance permitting the playing of and wagering on the card games of draw poker, lowball draw poker and panguingue. These card games are played and wagered on at a privately owned card club within the City of Lake Elsinore.

15. Neither Riverside County nor the State of California has attempted to enforce Riverside County Ordinance No. 331 against the card games played and wagered on within the City of Lake Elsinore.

16. In conformity with Cabazon Tribal Ordinance No. 5.6, the Cabazon Band constructed and, on or about October 16, 1980, began operating a card club on and within the boundaries of the Cabazon Indian Reservation. The Cabazon Band has no management agreement for the operation of its card room and pays no percentage fee to any outside entity.

17. On February 15, 1983, Riverside County officials closed down card games of draw poker, lowball poker, and panguingue, which were being played on the reservation in accordance with Tribal Ordinance No. 5.7. The Riverside County authorities further announced their intention to continue to enforce the Riverside County Ordinance against the tribal card games.

18. Pursuant to the tribal powers referred to in paragraphs 7 and 8 above, the Cabazon General Council, on February 9, 1980, duly enacted Cabazon Tribal Ordinance No. 5.6, Regulation of Bingo Games. That Tribal Ordinance has subsequently been amended, and the current version of said Ordinance is attached hereto as Exhibit B.

19. The tribal bingo ordinance has not been submitted to or approved by the Secretary of the Interior or any other federal agency. The defendants do not allege at this time, however, that the ordinance must be submitted or approved to be effective as a valid tribal ordinance.

20. Cabazon Tribal Ordinance No. 5.6 authorizes and regulates the playing of bingo on the Cabazon Indian Reservation, "[i]n order to promote economic development of the Cabazon Indian Reservation and to generate tribal revenues by the Cabazon Band of Mission Indians."

21. Cabazon Tribal Ordinance No. 5.6 further provides, in Section 4, that "Such net revenues shall be used for the purpose of promoting the health, education, welfare and well being of the Cabazon Indian Reservation and for other tribal purposes."

22. In conformity with Tribal Ordinance No. 5.6, the Cabazon Band has constructed and is now operating a tribal bingo parlor on its reservation. To facilitate its operation of this enterprise, the Cabazon Band has entered into a management agreement with a non-Indian corporation to provide financial, management, and related services. A copy of that agreement is attached hereto as Exhibit C.

23. Both the State of California, through California Penal Code section 326.5, and Riverside County, through Riverside County Ordinance No. 558, have duly enacted statutes relating to the playing of bingo.

24. Bingo games authorized under Cabazon Tribal Ordinance No. 5.6 and played in the Cabazon tribal bingo parlor do not comply in all respects with California Penal

Code section 326.5 and Riverside County Ordinance No. 558, in that, among other things, the Cabazon Band is not among the enumerated entities authorized to operate bingo games, and that prizes awarded sometimes exceed $250.

25. The Cabazon bingo parlor is approxiamtely 9,000 square feet and can accommodate approximately 500 players. The Cabazon card room is approximately 6,000 square feet in size and contains 25 card tables, which can accommodate 200 players.

26. The Cabazon bingo parlor is open to the public, as required by Cabazon Tribal Ordinance and the games include non-Indians. In addition, California Penal Code section 326.5 requires that "all bingo games shall be open to the public, not just to the members of the authorized organization." Participants are required to pay cash.

27. The bingo games offered by the Cabazon Band are conducted every day of the week.

28. The Cabazon bingo parlor is advertised through local printed media as well as through local radio programs. In addition, the Cabazon Band has erected a billboard which advertises their games as "Big Money Bingo."

29. The Cabazon Band distributes leaflets locally which advertise bingo prizes some of which exceed $250. Copies of those leaflets are attached hereto as Exhibit "D".

30. Neither California Penal Code § 326.5 nor Riverside County Ordinance No. 558 regulate or prohibit the advertising of bingo games.

31. The Cabazon Band's card club and bingo parlor provide employment for some tribal members.

32. The revenues and tribal taxes derived from the Cabazon card club and Cabazon bingo parlor fund tribal programs and services on the Reservation.

33. The defendants do not allege that the Cabazon card club or the Cabazon bingo parlor are associated with organized crime.

34. In a meeting between tribal and county representatives on February 22, 1983, the county officials stated that they intended to close down the Cabazon bingo parlor, just as they had earlier closed down the Cabazon card club.

35. The present action was commenced by the Cabazon Band of Mission Indians on February 23, 1983. A temporary restraining order against defendants was issued by the Court on February 24, 1983 and a preliminary injunction against defendants was issued by the Court on May 6, 1983.

DATED: June 19, 1984.

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

Attorneys for Plaintiff
CABAZON BAND OF
MISSION INDIANS

By /s/ Glenn M. Feldman

GERALD J. GEERLINGS,
County Counsel
Attorneys for
COUNTY OF RIVERSIDE

By /s/ Glenn R. Salter
Deputy County Counsel

JOHN K. VAN DE KAMP,
Attorney General of the
State of California

Attorneys for the
State of California

By /s/ Rudolf Corona, Jr.
Deputy Attorney General

EXHIBIT A

CABAZON BAND OF MISSION INDIANS

83-203 Indio Boulevard #2
Indio, California 92201

TRIBAL ORDINANCE NO. 5.7:

REGULATION OF CARD CLUBS

Section 1.0: Authorization

CARD CLUBS are hereby authorized on and within the boundaries of the Cabazon Indian Reservation, provided that the card games played are in conformity with Cabazon Tribal Ordinances. A "CARD CLUB" shall mean a business establishment at which card games authorized under this ordinance shall be played.

Section 2.0: Ownership and Operation

Card Clubs authorized under this ordinance shall be owned and operated by the Cabazon Band of Mission Indians.

Section 3.0: Card "Games"

Card "games" shall mean draw poker and panguingue.

Section 4.0: Rules and Regulations

(a) Established: The following rules and regulations are hereby established and promulgated by the Cabazon General Council with references to card games authorized under the provision of this ordinance.

Rule 1:

(a) It shall be unlawful to permit any person to play in any game authorized by the provisions of this ordinance at any time while such person appears to be, or is, under the influence of intoxicating liquor or drug and no person

under, or who appears to be under, the influence of intoxicating liquor or drug shall play in any such game.

Rule 2:

Except in a duly authorized tournament, it shall be unlawful to permit any person playing in any games authorized by this ordinance to make any individual bet or wager in excess of the maximum bets set forth for the particular game as specified in the rules or at any time during any game to permit an ante in excess of twice the dollar limit as specified for the particular game of poker set forth in these rules as the total sum anted by players participating in the game. "Razz games," i.e., where the winner of the pot leaves in an amount for the next game, are prohibited, except in a duly authorized tournament.

Rule 3:

Each and all of the games conducted or operated on the Reservation pursuant to the provisions of this ordinance shall be conducted and operated in full conformity with, and subject to all the provisions of applicable laws.

Rule 4:

It shall be unlawful to permit or allow any person under the age of twenty-one (21) years to play any card game authorized hereunder.

Rule 5:

A) Except in a duly authorized tournament, it shall be unlawful to charge any person playing draw poker a sum less than that set forth in the following schedule, as and for seat rental, entitling such person to play in such game:

DRAW

Limit	*Maximum Bet*	*Rental*
1.00	$ 2.00	$ 1.00 per one-half hour per player
2.00	$ 4.00	$ 1.25 per one-half hour per player
3.00	$ 6.00	$ 1.75 per one-half hour per player
4.00	$ 8.00	$ 2.25 per one-half hour per player
5.00	$ 10.00	$ 2.50 per one-half hour per player
6.00	$ 12.00	$ 2.75 per one-half hour per player
8.00	$ 16.00	$ 3.00 per one-half hour per player
10.00	$ 20.00	$ 3.00 per one-half hour per player
20.00	Straight	$ 5.00 per one-half hour per player
20.00	$ 40.00	$ 5.00 per one-half hour per player
30.00	$ 60.00	$ 6.00 per one-half hour per player
40.00	$ 80.00	$ 7.00 per one-half hour per player
50.00	$100.00	$ 8.00 per one-half hour per player
60.00	$120.00	$ 8.00 per one-half hour per player
70.00	$140.00	$ 8.00 per one-half hour per player
80.00	$160.00	$ 8.00 per one-half hour per player
90.00	$180.00	$ 8.00 per one-half hour per player
100.00	$200.00	$10.00 per one-half hour per player

LOW BALL—OPEN BLIND

Limit	*Maximum Bet*	*Rental*
1.00	$ 2.00	$ 1.25 per one-half hour per player
2.00	$ 4.00	$ 1.75 per one-half hour per player
3.00	$ 6.00	$ 2.50 per one-half hour per player
4.00	$ 8.00	$ 3.00 per one-half hour per player
5.00	$ 10.00	$ 3.00 per one-half hour per player
6.00	$ 12.00	$ 3.25 per one-half hour per player
8.00	$ 16.00	$ 3.50 per one-half hour per player
10.00	$ 20.00	$ 3.50 per one-half hour per player
10.00	Raise blind $ 20.00	$ 4.00 per one-half hour per player
15.00	$ 20.00	$ 4.00 per one-half hour per player
15.00	Raise blind $ 20.00	$ 5.00 per one-half hour per player
20.00	$ 20.00	$ 5.00 per one-half hour per player
20.00	Raise blind $ 20.00	$ 6.00 per one-half hour per player
20.00	$ 40.00	$ 6.00 per one-half hour per player
30.00	$ 60.00	$ 7.00 per one-half hour per player
40.00	$ 80.00	$ 8.00 per one-half hour per player
50.00	$100.00	$ 8.00 per one-half hour per player
60.00	$120.00	$ 8.00 per one-half hour per player
70.00	$140.00	$ 8.00 per one-half hour per player
80.00	$160.00	$ 8.00 per one-half hour per player
90.00	$180.00	$ 8.00 per one-half hour per player
100.00	$200.00	$10.00 per one-half hour per player

Except in a duly authorized tournament, it shall be unlawful to charge for the playing of the game of panguingue a sum less than the minimum table rental per person, and such minimum rates shall be according to the following schedule:

$ .50 condition games	$1.00 per one-half hour per player
$ 1.00 condition games	$1.25 per one-half hour per player
$ 2.00 condition games	$2.00 per one-half hour per player
$ 3.00 condition games	$2.75 per one-half hour per player
$ 4.00 condition games	$3.50 per one-half hour per player
$ 5.00 condition games	$4.00 per one-half hour per player
$10.00 condition games	$6.00 per one-half hour per player
$15.00 condition games	$7.00 per one-half hour per player
$20.00 condition games	$8.00 per one-half hour per player
$20.00 and above	$8.00 per one-half hour per player

Rule 6:

The only games permitted to be played in a card club authorized by the provisions of this ordinance shall be the game of draw poker, and the game of panguingue.

Rule 7:

The playing of all games provided for in this ordinance shall be confined to the area designated as "Card Room", which shall be located on the first floor, or ground floor, of a card club, and no playing of any game provided for or permitted by this ordinance shall be permitted at any other location of such premises.

Rule 8:

A card club shall be open for inspection during all hours to the Tribal Chairman, or a duly authorized Gaming Commission, without a search warrant.

Rule 9:

Notwithstanding the foregoing rules, poker tournaments shall be permitted, provided that the time, place

and special rules including the minimum and maximum bets for such tournament play, are first approved by the Cabazon Band Business Committee.

Section 5.0: Registration, Fingerprinting, and Photographing of Certain Employees of Card Clubs

(a) It shall be unlawful for any card club on the Reservation to employ any person without such person having been first fingerprinted and photographed by the law enforcement agency of the Reservation.

(b) As set forth in subsection (a) of this section, any person employed by a card club on the Reservation, within three (3) days after such employment shall submit to fingerprinting and photographing by the Reservation law enforcement agency. A processing fee in an amount set by the Cabazon Business Committee, shall be paid to the law enforcement officer to cover the costs of such fingerprinting and photographing.

(c) It shall be the responsibility and duty of the Reservation law enforcement officer to establish the necessary procedures to implement and administer the provisions of this section.

(d) The information received by the law enforcement officer pursuant to the provisions of this section shall be treated as confidential and shall be accessible only to the Tribal Chief of Police and the Tribal Chairman as well as such other persons or agencies that they shall determine should be informed.

Section 6.0: Unlawful Act

(a) Unlawful Locations: It shall be unlawful for any person to play, or permit the playing of, any game regu-

lated or referred to by the provisions of this ordinance at any place within the Reservation, except a card club operated pursuant to the provisions of this ordinance.

(b) Unlawful Games: It shall be unlawful for any person to play any game at any place pursuant to this ordinance, which game is not permitted by the provisions of this chapter, or in any game played in violation of this ordinance.

(c) Draw Poker Variation: It shall be unlawful for any person to play, or allow or permit to be played, at any place of business authorized under the provisions of this ordinance any variation of the game of draw poker wherein five (5) cards are not originally dealt to each player, or wherein each player shall draw any greater or lesser number of cards than the number of cards originally discarded prior to the draw, or in any game played in violation of any provision of this ordinance.

Section 8: Presumptions

The Cabazon General Council, in adopting the provisions of this ordinance and establishing the regulation of card clubs owned and operated by the Cabazon Band of Mission Indians to permit the playing of the game of draw poker, and the game of panguingue, hereby declares that the playing of games not prohibited by statute is conducive to public morals when the same are played and conducted according to all the laws, rules, regulations, and provisions as set forth in this ordinance, and that in any proceedings to challenge the validity of this ordinance, or to abate the business conducted hereunder, or to prosecute the Cabazon Band, its officers, members, employees or agents for any acts authorized thereby, it shall be presumed that

such acts are not unlawful and that such business is not a public or private nuisance.

Section 9: Violations

It shall be unlawful for any person to violate any of the provisions of this ordinance.

Section 10: Date of Effect of Ordinance

This ordinance shall take effect immediately upon its adoption.

Section 11: Validity of Ordinance

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of the Cabazon Tribal Court or other court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Cabazon General Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, phrases or portion be declared invalid or unconstitutional.

Section 12: Certification

The Business Committee shall certify the adoption of this ordinance and shall cause the same to be published in the manner prescribed by law.

CERTIFICATION

This is to certify that the above ordinance was adopted at a General Council meeting held on 24th day of May, 1980 by a vote of 14 for, 2 against, 1 abstaining.

/s/ Illegible
Chairman

/s/ Illegible
Vice-Chairman

/s/ John A James
Secretary-Treasurer

EXHIBIT B

83-203 Indio Avenue, # 9
Indio, CA 92201

WHEREAS: We are approving said Bingo Ordinance

TRIBAL ORDINANCE NO. 5.6: REGULATION OF BINGO GAMES

Section 1:

As used in this ordinance, "bingo" means (a) a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random; or (b) the use of cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes; the winning cards shall not be known prior to the game by any person participating in the playing or the operation of the game; and all such preprinted cards shall bear the legend "Cabazon Indian Reservation."

Section 2:

In order to promote economic development of the Cabazon Indian Reservation and to generate tribal revenues, by the Cabazon Band of Mission Indians. Bingo games are hereby authorized on and within the boundaries of the Cabazon Indian Reservation, provided that such games are in conformity with laws of the Cabazon Band of Mission Indians and this ordinance.

Section 3:

All bingo games authorized by this ordinance shall be sponsored by the Cabazon Indian Reservation. No other person, group, corporation, individual, Indian Tribe or

Band, or entity is or shall be authorized to sponsor a bingo game on or within the boundaries of the Cabazon Indian Reservation.

Section 4:

All net revenues derived from a bingo game shall be kept in a special fund or account and shall not be comingled with any other fund or account. Such net revenues shall be used for the purpose of promoting the health, education, welfare and well being of the Cabazon Indian Reservation and for other tribal purposes.

Section 5:

Bingo games shall be open to the public.

Section 6:

No person under eighteen years of age shall be allowed to participate in any bingo game.

CERTIFICATION

We, the undersigned duly elected members of the Cabazon Band of Mission Indians, do hereby certify the foregoing Ordinance was adopted by the Cabazon General Council by a vote of 9 for, 5 against, 1 abstaining.

/s/ Arthur Welmas
Tribal Chairman

/s/ Brenda James
1st Vice-Chairman

/s/ Charles Dean Welmas
2nd Vice-Chairman

/s/ John A. James
Secretary-Treasurer

9. STIPULATION (MORONGO)

BARBARA E. KARSHMER
Attorney at Law
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925 N Street, Suite 150
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(209) 233-1195

Attorneys for Plaintiff, MORONGO BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-83-1117-LEW(Tx)

THE CABAZON BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK,

Defendants.

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

CASE NO CV-83-3073 (LEW)

MORONGO BAND OF MISSION, INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, et al.,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

AGREED STATEMENT OF UNCONTROVERTED FACTS

The Plaintiff, Morongo Band of Mission Indians, and Defendants County of Riverside and Ben Clark, and Defendant-in-Intervention, State of California, acting through their respective counsel, agree and stipulate that the following facts, while not admitted, shall be accepted as true and correct for the purpose of this action only and shall be used as the basis for cross motions for summary judgment scheduled to be filed herein on June 29, 1984. It is understood and agreed, however, that this stipulation shall not be construed as a concession by either party of the relevancy or materiality of any facts contained herein and that the parties expressly reserve the right to argue relevancy or materiality of any facts stipulated herein to be true.

1. The Morongo Band of Mission Indians (hereinafter "Morongo Band") is a federally-recognized Indian Tribe having a governing body duly recognized by the Secretary of the Interior. The Morongo Band is listed by the Secretary of the Interior in the Federal Register as having a government-to-government relationship with the United States. 46 Fed. Reg. pp. 35360, 35361, July 8, 1981.

2. The Morongo Band of Mission Indians is the beneficial owner of the Morongo Indian Reservation, consisting of approximately 32,300 acres of land in Riverside County, California. The Morongo Indian Reservation is located east of the City of Banning in the San Gorgonio Pass.

3. The Reservation originally was created by, *inter alia*, a series of Presidential Executive Orders, see, *e.g.*,

1 Kappler, *Indian Laws and Treaties* 821, Order of August 25, 1877, Presidential proclamations, a federal statute and deeds, beginning in 1876 and ending in 1948. Trust patents were issued on December 14, 1908 and January 23, 1911 pursuant to the Mission Indian Relief Act of January 12, 1891, 26 Stat. 712, as amended by the Act of March 1, 1907, 34 Stat. 1022. Under those patents, title to the Reservation is held by the United States "in trust for the sole use and benefit of the said Morongo Band or Village of Indians . . ."

4. Defendant County of Riverside (hereinafter referred to as "the County") is a political subdivision of, and is organized under the laws of, the State of California. The Morongo Indian Reservation is within the exterior boundaries of the County of Riverside.

5. Defendant Ben Clark is the duly-elected Sheriff of the County of Riverside, and in that capacity is vested with the authority to enforce all laws of the State of California and the County of Riverside.

6. The State of California has intervened as a defendant in this action.

7. The Morongo Band of Mission Indians has about 730 enrolled members, approximately 300 of whom reside on the Morongo Indian Reservation.

8. The unemployment level on the Morongo Indian Reservation is in excess of sixty-four percent (64%).

9. The Morongo Indian Reservation is located in a high desert, mountain pass area and has no known natural resources such as timber, wild life or fish, oil, or coal to

utilize to create revenue for the operation of its government or the provision of services to its members.

10. By Ordinance adopted on April 23, 1983, the Morongo Band of Mission Indians authorized the playing of Bingo on the Morongo Indian Reservation. See Exhibit 1. Through its ordinance it determined that the establishment of a Tribal Bingo Enterprise would promote the health, welfare, and general interests of the Band by, *inter alia*, providing a source of revenue to the Band for the provision of governmental services needed by its members, a source of employment for Tribal members, and a source of funding for programs to promote the health, education, and welfare of its members. The Band further determined that, because the Band lacked the capital and the management expertise to build a Bingo facility, establish the enterprise and manage it on a profitable basis, it would be necessary to retain the services of a manager for its Enterprise. The Band's Ordinance prohibits the operation of any Bingo Enterprise on the Morongo Indian Reservation other than the Morongo Tribal Bingo Enterprise, and regulates in detail the days and hours during which the Bingo games may be conducted, the amount of prize money which may be awarded, the minimum age of participants, and restricts the use of the Band's Bingo revenues to "the support of programs to promote the health, education and general welfare" of the Band. Said Ordinance has been submitted to the U.S. Department of Interior, Bureau of Indian Affairs with a request that it be reviewed and approved. At this time, however, defendants do not allege that the ordinance must be submitted to or approved by the U.S. Department of Interior, Bureau of Indian Affairs to be effective as a valid tribal ordinance.

11. On April 26, 1983, the Morongo Band of Mission Indians entered into an agreement with Justus Enterprises under which the Band retained the services of Justus Enterprises as the the Band's agent for the purpose of managing the Morongo Tribal Bingo Enterprise, and commenced operations of said Enterprise soon thereafter.

12. At all times relevant hereto, the Morongo Tribal Bingo Enterprise has been operated pursuant to the tribal bingo ordinance adopted in a referendum among the Band's members. During its operations, the Morongo Tribal Bingo Enterprise awarded prizes which at some times exceeded $250 in cash. While the Morongo Band has temporarily ceased its Tribal Bingo operations, its Bingo Ordinance remains in effect and the Morongo Band intends to begin its Tribal Bingo Enterprise again as soon as its new facility being constructed on tribal land is completed and ready for operation.

13. While the Morongo Tribal Bingo Enterprise was in operation, it employed 86 Indians.

14. When the Band initiated its Tribal Bingo Enterprise, defendants County of Riverside and Sheriff Ben Clark advised the Band that they would arrest the operators and patrons of the Enterprise, as well as to close down the Enterprise, because the Band had not secured a license from the County pursuant to Riverside County Ordinance No. 558, and because they claimed that the operation of the Enterprise violated the provisions of California Penal Code § 326.5.

15. The Bingo operation of the Morongo Tribe did not and will not comply in all respects with California Penal Code Section 326.5 and County Ordinance No. 558

in that, among other things, the Morongo Band is not among the enumerated entities authorized to operate Bingo games under that section and in that the prizes awarded did at some times exceed $250.

16. When previously in operation, the Morongo Tribal Bingo Enterprise was conducted in a facility which was approximately 28,000 square feet with a seating capacity of 1,400. This facility was on an allotted parcel of Reservation land adjacent to Interstate 10 which runs in an East-West direction through the center of the reservation. The "Indian Bingo" sign on that parcel of land was visible from Interstate 10. The tribal land on which the new tribal bingo facility is being constructed lies several miles east of this previous location. Neither Penal Code Section 326.5 nor County Ordinance No. 558 regulate or prohibit the advertising of Bingo.

17. The Morongo Tribal Bingo Enterprise was and shall be open to the public, including non-Indians, pursuant to tribal ordinance. California Penal Code § 326.5 also requires that all Bingo games shall be open to the general public, not just to the members of the organization sponsoring the games.

18. Persons 18 years of age or older are allowed to play Bingo under the Morongo tribal ordinance.

19. Riverside County Ordinance No. 558 regulates Bingo games operated in unincorporated areas of Riverside County by entities eligible to do so pursuant to California Penal Code § 326.5.

20. The State of California permits units of local government to determine whether certain other forms of

gambling, such as low-ball and draw poker, may be played in profit-making businesses maintained for that express purpose and operated by salaried employees. The State imposes no limits upon the amount which can be wagered, won, or lost in any such games.

21. The County of Riverside prohibits card rooms in unincorporated areas of the County; however, at least one city within the County of Riverside permits such gambling activities.

22. The Defendants do not allege that the Morongo Tribal Bingo Enterprise was or is associated with organized crime.

23. In January 1984, the Morongo Band of Mission Indians voted to terminate the Agreement under which Justus Enterprises had managed the Band's Bingo Enterprise, and suspended operation of the Enterprise on or about February 9, 1984 until a new manager could be employed.

24. On May 17, 1984, the Band entered into a management agreement with CBA Development Co., Inc. pursuant to which a new Bingo facility will be constructed on Tribal land, the Band will receive not less than seventy-five (75%) percent share of the Enterprise profits and the Band will be actively involved in the formulation and implementation of all the management policies of the Enterprise. Said agreement has been submitted to the United States Department of Interior, Bureau of Indian Affairs with a request that it be approved. A copy of this agreement is attached hereto as Exhibit 2.

25. The Morongo Tribal Bingo Enterprise shall be located on a parcel of Reservation land held in trust by the United States for the Morongo Band as a whole.

26. When the Morongo Tribal Bingo Enterprise commences operations again, the jackpots will at some times exceed $250.

Dated:

FRAMPTON, KARSHMER & KESSELMAN
Attorney for MORONGO BAND OF
MISSION INDIANS

By _____
BARBARA E. KARSHMER

Dated:

GERALD J. GEERLINGS, County
Counsel, Attorneys for COUNTY OF
RIVERSIDE

By _____
GLENN R. SALTER

Dated:

JOHN K. VAN DE KAMP, Attorney
General, Attorneys for STATE OF
CALIFORNIA

By _____
RUDOLPH CORONA

EXHIBIT 1

MORONGO BAND OF MISSION INDIANS
11581 Potrero Road
Banning, CA 92260

An Ordinance Regulating the Play
of the Game of Bingo on the Morongo Indian Reservation

BE IT ENACTED BY THE MORONGO BAND OF MISSION INDIANS AS FOLLOWS:

Section 1 — Definitions

The following terms and phrases when used in this Ordinance, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

(a) *Bingo* or quest game mean and refer to the activity commonly known as bingo and all other similarly organized and played games wherein participants pay a sum of money for the use or benefit of one or more prenumbered cards. When the game commences, numbers are drawn by chance, one by one, and announced, and the numbers are continually ascertained at random, until a participant announces that he has matched up on his prenumbered purchased card enough randomly drawn numbers to complete the desired winning pattern of numbers. At this time the participant calls out "bingo" or such other desired word or phrase and is declared the winner of a predetermined prize.

(b) *Bingo cards* shall mean and refer to the flat, usually rectangular piece of paper or thin pasteboard normally employed by players engaged in the game of bingo. More than one set of bingo numbers may be printed on any single piece of paper.

(c) *Band* or *Morongo Band of Mission Indians* shall mean the semi-sovereign federally-recognized Indian tribe which, along with certain of its members, is the beneficial owner of and the local government for the allotted and unallotted trust lands of the Morongo Indian Reservation, located to the east of the City of Banning, County of Riverside, State of California. The Band acts through its duly-serving Tribal Council or Business Committee according to the custom and tradition of our people.

(d) *Reservation* or *Morongo Indian Reservation* shall mean all those parcels of land, both allotted and unallotted and whether or not held in trust by the United States for the Band itself or any individual Indian, which are described and included in the patent issued on December 14, 1908 by the United States to the Band for the said lands, plus any additional such lands later added to the Reservation by the United States.

(e) *Player* shall mean any person paying some amount of U.S. currency for admission to, or participation in, a bingo game and who has some reasonable expectation of receiving a prize if one or more of his prenumbered cards contains a sufficient amount of numbers which are the same as those announced during a bingo game.

(f) *Prizes* shall mean and refer to any U.S. currency, cash or other property or thing of value awarded to a player of a bingo game or players in one or a series of bingo games.

Section 2 — Findings

The Morongo Band of Mission Indians makes the following findings and bases this Ordinance thereon:

(a) The Morongo Band of Mission Indians is a semi-sovereign federally-recognized Indian tribe with the duty and authority to regulate the activities of its members and others on the Reservation in the interest of the Band and its members to the maximum extent permitted by federal law.

(b) There is a great unmet need for economic development to stimulate the Reservation's economy, and a bingo operation will help to meet that need by providing employment for Band members, by attracting other business ventures, by encouraging Band members to make commercial use of their allotted trust lands, and by providing funds for the Band to use for general Band purposes.

(c) Due to present economic conditions, unemployment among Band members, which has always been above 50%, has reached an unacceptable level, causing severe economic hardship to many members of the Band, and must be addressed by the Band now, partially through this Ordinance.

(d) The Band now lacks the financial resources to provide adequate services for the health, welfare, and general benefit of its people, and will use the revenue from the bingo enterprise license granted under this Ordinance as a source of such funds, as noted below.

(e) According to its custom and tradition, the Band generally does not regulate the uses to which any member of the Band may devote his own allotted trust land. However, the Band anticipates that more than one member, and possibly the Band itself, may wish to operate bingo enterprises on the Reservation, and that such a pro-

liferation of bingo enterprises on the Reservation is not in the best interests of the Band. For this reason, the number of such bingo enterprises, and certain aspects of their operation, must be regulated for the health, welfare, and general interest of the Band and its members.

(f) By this Ordinance the Band intends to preempt and to fully occupy the field of the regulation of bingo on the Reservation, as to all those who conduct such bingo games and all those who play such bingo games, Indian and non-Indian alike.

Section 3 — Morongo Tribal Bingo Enterprise

(a) A Morongo Tribal Bingo Enterprise is hereby authorized and established as part of and for the benefit of the Morongo Band of Mission Indians.

(b) The Morongo Tribal Council is authorized and empowered to obtain suitable facilities, including parking facilities, within the exterior boundaries of the Morongo Indian Reservation, to operate and maintain the Morongo Tribal Bingo Enterprise for this purpose to enter into binding leasehold agreements or other appropriate arrangements for buildings and property located within the boundaries of the Reservation.

(c) In order to obtain persons with the necessary business and management knowledge and experience to operate the Morongo Tribal Bingo Enterprise, the Morongo Tribal Council is authorized to enter into management agreement for the maintenance, operation and management of the Tribal Bingo Enterprise on such terms and under such conditions as the Tribal Council shall determine to be fair and reasonable and in the best interests

of the Morongo Band of Mission Indians; provided that the Tribal Council shall not agree to pay any management fee which is not in its judgment necessary under prevailing market conditions to obtain competent and skilled management and business assistance for the operation of the Morongo Tribal Bingo Enterprise.

(d) Bingo games may be conducted each and every day of the week and at any hour of the day or night. Games shall be operated by the Morongo Tribal Bingo Enterprise not less than three days (Friday, Saturday and Sunday) per week. There shall be no limit as to prize money for any single game or session.

(e) No person under eighteen (18) years of age shall be allowed to play bingo.

(f) All persons operating or assisting the operation or conduct of any bingo game shall wear tags evidencing their names, or other means of identifying such persons as employees of the bingo operator.

Section 4 — Use of Net Proceeds

The Band will use all of the revenues which it collects pursuant to this Ordinance for the support of programs to promote the health, education and general welfare of its people.

Section 5 — Prohibition and Penalties

(a) No person shall conduct, operate, maintain or participate in any bingo game within the boundaries of the Morongo Indian Reservation unless such bingo game is operated or conducted by the Morongo Tribal Bingo Enterprise in accordance with this Ordinance. The Tribal

Council may waive this section in the case of bona fide charitable churches or other similar nonprofit reservation-based organizations who apply for exemption, provided however that such organizations do not offer prizes in excess of those allowed by California Penal Code § 326.5.

(b) Any person determined by the Band, acting through its Tribal Council, to be in violation of this Ordinance may be fined up to $500.00 for each violation.

EXHIBIT 2

MORONGO BAND OF MISSION INDIANS TRIBAL BINGO ENTERPRISE MANAGEMENT AGREEMENT

This Agreement is entered into on May 17, 1984, by and between the Morongo Band of Mission Indians (hereinafter referred to as the MORONGO BAND) and CBA DEVELOPMENT CO., INC. (hereinafter referred to as the MANAGER or CBA) a California corporation having Dong Choi as its principal shareholder and having its principal place of business at 4536 Wilshire Blvd., Suite 103, Los Angeles, California 90010. The purpose of this Agreement is to enter into a Management Agreement for the establishment and operation of a Tribal Bingo Enterprise on the Morongo Indian Reservation in Riverside County, California.

RECITALS

WHEREAS the Morongo Band of Mission Indians is a federally-recognized Indian tribe possessing sovereign powers over the Morongo Indian Reservation located in Riverside County, California; and

WHEREAS the Morongo Band of Mission Indians is desirous of developing economic enterprises on its reservation in order to improve the economic circumstances of its members and to enable it to better serve the social, economic, educational, and health needs of its members and to enhance tribal economic self-sufficiency and self-determination; and

WHEREAS the operation of a Tribal Bingo Enterprise will provide employment and training for many

MORONGO BAND members which is of great importance to the Band because the unemployment rate on the Morongo Indian Reservation is in excess of 60 percent; and

WHEREAS the operation of a Tribal Bingo Enterprise will provide significant financial resources to the MORONGO BAND without the necessity of any capital outlay by the MORONGO BAND; and

WHEREAS the MORONGO BAND has determined that a portion of the Reservation should be utilized for the establishment of a Tribal Bingo Enterprise; and

WHEREAS the MORONGO BAND presently lacks the resources and expertise necessary to establish and operate a Tribal Bingo Enterprise in an efficient and profitable manner, and thus, is desirous of entering into an agreement by which it may obtain the finances and management expertise necessary to establish and operate the Tribal Bingo Enterprise for a short term, but one which is sufficient to enable the MORONGO BAND to accumulate sufficient capital and expertise to assume full managerial control of said Enterprise at the expiration of this Agreement; and

WHEREAS CBA, acting as the MANAGER, can supply the necessary financing and expertise to establish a successful Tribal Bingo Enterprise for the MORONGO BAND and is committed to the principal of assisting the MORONGO BAND to develop its own management capabilities and sources of revenue to continue this operation successfully without outside assistance at the end of the term of this Management Agreement: and

WHEREAS CBA is desirous and willing to assist the MORONGO BAND in establishing a successful and self-

sufficient Tribal Bingo Enterprise on the Morongo Indian Reservation;

NOW THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. *PURPOSE:* The purpose of this Management Agreement is to establish and operate a Morongo Tribal Bingo Enterprise on the Morongo Indian Reservation.

2. *TERM:* The Morongo Band of Mission Indians hereby retains and engages MANAGER upon the signing of this contract for a term beginning immediately upon the signing of this agreement and extending for five (5) years from the date of opening of the Morongo Tribal Bingo Enterprise, provided that said opening occurs not later than one hundred twenty (120) days after the date of the signing of this Agreement. Subject only to the provisions of Paragraph 5(g) regarding events beyond the control of the MANAGER, in no event shall the five-year term commence later than one hundred twenty (120) days after the signing of this Agreement.

3. *ENGAGEMENT OF MANAGER:* The MORONGO BAND hereby retains and engages the MANAGER to finance, construct, improve, develop, manage, operate, and maintain the Morongo Tribal Bingo Enterprise under the supervision of the MORONGO BAND. It is the specific representation of the MANAGER that it has the financial ability to and will provide the funding to finance the development of the site, the construction of the building, the installation of equipment and supplies, and that it will provide the necessary cash to commence operations in a total approximate amount of One Million Two

Hundred Fifty Thousand Dollars ($1,250,000) which MANAGER warrants it has available. The failure of the MANAGER to provide said funding for the construction and development of the Bingo facility or its inability to commence operation of the Tribal Bingo Enterprise within one hundred and eighty (180) days from the signing of this Agreement shall constitute a material breach of this Agreement and may, at the option of the MORONGO BAND, serve as just cause for the MORONGO BAND to terminate this Agreement and declare it null and void, unless MANAGER's failure to perform has been caused by government order, material shortages, strikes, riots, storm, flood, natural disaster, or any cause clearly beyond the MANAGER's control. A lack of financing shall not be considered a cause beyond the control of the MANAGER.

4. *COMPENSATION:*

A. GUARANTEED MINIMUM MONTHLY PAYMENT TO MORONGO BAND: Because the MANAGER warrants that it has the ability to make this Tribal Bingo Enterprise profitable and successful, the MANAGER guarantees the following minimum monthly payment to the MORONGO BAND: For the first month of operation, the minimum income guaranteed to the MORONGO BAND shall be Fifty Thousand Dollars ($50,000); for the second month of operation the minimum income guaranteed to the MORONGO BAND shall be Seventy-Five Thousand Dollars ($75,000); and for the third month of operation and for each and every month thereafter, the minimum monthly income guaranteed to the MORONGO BAND shall be One Hundred Thousand Dollars ($100,000). In order to secure this guaranteed payment, the MANAGER shall, prior to the first day of operation

of the Tribal Bingo Enterprise, establish an escrow account in the amount of One Hundred Thousand Dollars ($100,000). The location of the escrow account and the specific terms thereof shall be agreed upon in writing by the parties to this Agreement within sixty days of the date of the signing of this Agreement, but in no case later than ten days prior to the commencement of operations of the Tribal Bingo Enterprise. However, the basic terms of this account shall be that the MANAGER shall maintain a balance in this account of One Hundred Thousand Dollars ($100,000) at all times after the second month of operation. If the MORONGO BAND does not receive payment of the guaranteed minimum monthly amount required above by the sixteenth day of each month, then the MORONGO BAND shall present a sworn statement to the escrow holder stating the amount of money received and shall be entitled to withdraw such amounts as are necessary to bring the payment to the MORONGO BAND up to the minimum guaranteed payment for the month. Within five (5) days of being notified of any withdrawal by the MORONGO BAND from the escrow account, the MANAGER shall deposit the necessary amount to bring the balance in the escrow account up to One Hundred Thousand Dollars ($100,000). It is specifically agreed and understood by and between the parties that this guaranteed minimum monthly payment is to be considered a portion of the MORONGO BAND's seventy-five percent (75%) of the profits, but shall be paid to the MORONGO BAND even if it exceeds the share of the profits that would be due to the MORONGO BAND for that month. Notwithstanding the foregoing, the MANAGER shall be entitled to repayment of guaranteed payments made to the MORONGO

BAND in excess of seventy-five percent (75%) of the profits and accrual of unpaid management fees as more particularly set forth in Subpart "B" below, provided that profits from the Tribal Bingo Enterprise are available for such payment after the guaranteed monthly payments have been made to the MORONGO BAND, and after construction and start-up costs have been repaid each month as provided in Paragraph 6 below.

B. PAYMENT OF MANAGEMENT FEE TO MANAGER: In consideration of the performance of the duties as described herein, and provided that said percentage is available for distribution after the MORONGO BAND has been paid its guaranteed minimum income as set forth in subpart "A" above, and after the repayment of the construction and start up costs is made as provided in Paragraph 6, MANAGER shall receive as a management fee twenty-five percent (25%) of the net operating profits for each fiscal year resulting from and in connection with the operation of the Morongo Tribal Bingo Enterprise for the duration of this Agreement, unless it is sooner terminated as provided herein. In the event that the MANAGER shall be required to make a payment to the MORONGO BAND in excess of seventy-five percent (75%) of the profits in any given month by virtue of the guarantee ("payment shortfall"), as more particularly set forth in Subpart "A," above, the MANAGER shall be entitled to repayment of the payment shortfall from revenues at the first available opportunity providing that repayment shall not interfere with the MORONGO BAND's additional monthly guaranteed payments. In the event that there will be inadequate revenues to pay a guaranteed

payment to the MORONGO BAND and twenty-five percent (25%) of the profits to the MANAGER, the unpaid amount to the MANAGER shall accrue and shall be paid at the first available opportunity. (As used above, the term "first available opportunity" refers to the first regularly scheduled date for distribution of profits at which such funds are available.) By way of example, if in the third month the profits are Forty Thousand Dollars ($40,000), the shortfall shall be Sixty Thousand Dollars ($60,000). The MORONGO BAND shall receive One Hundred Thousand Dollars ($100,000) and the MANAGER shall be entitled to accrue Thirty Three Thousand Three Hundred Thirty Three Dollars ($33,333) profit as its twenty-five percent (25%) share plus repayment of the Forty Thousand Dollars ($40,000), both of which shall be paid when revenues are adequate to pay the MANAGER.

5. *CONSTRUCTION OF THE BINGO FACILITY:*

A. The MANAGER shall cause to be constructed or acquired a Bingo facility and related improvements on the Morongo Indian Reservation at the site approved by the MORONGO BAND acting through its Business Committee. The facility itself shall be approximately thirty-five thousand (35,000) square feet and shall be of sufficient size and capacity to safely and comfortably accommodate and provide refreshments for approximately two-thousand (2,000) seated patrons. There shall be provided sufficient parking and sanitary facilities to accommodate these patrons, as well as sufficient office space on premises for the effective management of the Enterprise. The Bingo facility shall have a water supply and sewer facilities

which adequately meet the needs of the Enterprise without adversely affecting the MORONGO BAND's adjacent lands. No equipment nor any part of the improvements shall be obtained through lease unless the MANAGER first obtains the written approval of the Business Committee of the MORONGO BAND.

B. Detailed site and construction plans and specifications for the Bingo facility and appurtenant improvements shall be submitted to the MORONGO BAND for consideration and approval within fourteen (14) days of the signing of this contract. The MORONGO BAND, acting through its duly-elected Business Committee, shall have six (6) days from the date of receipt of said plans and specifications in which to request any changes or to state any objections thereto. The MORONGO BAND's approval of such plans and specifications shall not be unreasonably withheld. The MANAGER shall make or cause to be made any changes or modifications that are timely and reasonably requested by the MORONGO BAND so long as such changes or modifications will not increase the total cost of the Bingo facility and its appurtenant improvements. Failure of the MORONGO BAND to disapprove of or object to the plans and specifications within the time allowed shall be deemed the MORONGO BAND's approval thereof.

C. Prior to the commencement of construction of the facility, the MANAGER shall submit copies of all contracts and estimated or actual costs to be incurred in the construction of the facility. Prior to the commencement of construction, the total cost for the development of the site, for construction of the facility, and for all fix-

tures, furnishings and equipment shall be approved and agreed upon between the parties in writing.

D. The MANAGER shall provide all funds necessary to construct the Bingo facility and its appurtenant improvements. The MORONGO BAND shall not be liable for any construction costs or financing costs other than for the repayment provided herein. The MANAGER shall obtain, as an expense of construction, performance and payment bonds in amounts sufficient to cover all costs and phases of construction. The MANAGER shall keep the Bingo facility, its appurtenant improvements, and the portion of the Morongo Indian Reservation of which they are a part, free and clear of all mechanics' and other liens resulting from the construction of the Bingo facility and its appurtenant improvements. These costs shall be included as costs of construction.

E. The MORONGO BAND, acting through its duly-authorized Business Committee, shall have the absolute right to enter upon the premises and to inspect all aspects of construction during the period of construction.

F. The building shall be constructed in accordance with all fire and safety requirements of the State of California and the County of Riverside, although those requirements would not otherwise apply on the Morongo Indian Reservation. Arrangements shall be made to have the building inspected for such compliance if practical.

G. The MANAGER shall commence or cause to be commenced the construction of the Bingo facility and its appurtenant improvements within thirty (30) days following the execution of this Agreement and shall exert its

best efforts to complete construction and commence operations within one hundred twenty (120) days of the signing of this Agreement. If the MANAGER is unable to complete construction and commence operations within one hundred twenty (120) days, the Manager shall pay the MORONGO BAND the amount of Three Thousand Three Hundred Dollars ($3,300) per day beginning one hundred twenty-one (121) days after the signing of this Agreement and terminating on the date on which the Tribal Bingo Enterprise commences operations. Any delays in the completion of construction of the Bingo facility and its appurtenant improvements caused by government order, material shortages, strikes, riots, storm, flood, natural disaster, or any cause clearly beyond the MANAGER's control shall be excused. A lack of financing shall not be considered a cause beyond the control of the MANAGER.

H. Title to any and all improvements and fixtures constructed or installed during the period of this Agreement shall vest solely in the MORONGO BAND. If any non-tribal government attempts to impose any possessory interest tax on either party to this Agreement regarding this Bingo operation, both parties shall resist such attempt. However, if a court of competent jurisdiction finally determines that any such tax is legally due, it shall be deemed an operating expense of the Morongo Tribal Bingo Enterprise.

6. *REPAYMENT FOR COSTS OF CONSTRUCTION AND START-UP:*

A. Upon the completion of construction, the MANAGER shall provide the MORONGO BAND with an itemized statement and back-up documentation substantiat-

ing the costs incurred for the construction of the building and for the equipment therein. The MANAGER shall also provide a detailed statement, accompanied by documentation, of all expenses incurred for the purpose of commencing operations of the Enterprise. In no event shall the MORONGO BAND be liable to reimburse the MANAGER for more than $1,250,000 of actual expenses incurred, nor shall the BAND be liable for any expenses for interest or financing associated with the funds utilized for the construction of, the equipping of, or the start-up costs of the Morongo Tribal Bingo Enterprise. All such interest and/or finance charges shall be the sole liability of the MANAGER and shall not be considered part of the net operating expenses of the business and are not to be reimbursed to the MANAGER by the MORONGO BAND. The documented costs shall be reviewed and approved or disapproved by the Business Committee of the Morongo Band within twenty days of their receipts by the MORONGO BAND. If any costs are questioned, the MORONGO BAND and the MANAGER shall meet and reach agreement on the amount to be reimbursed. The agreed upon documented costs for construction and commencing operations of the Morongo Tribal Bingo Enterprise shall be considered operating expenses of the Enterprise except as otherwise provided herein, and shall be repaid as follows:

(i) The repayment of any and all amounts determined to be due and owing to the MANAGER pursuant to Paragraph A above shall be considered part of the operating expenses of the Morongo Tribal Bingo Enterprise and shall be paid prior to the distribution of any percentage profits, except not prior to the minimum

monthly payments guaranteed to be paid to the MORONGO BAND pursuant to Paragraph 4 above.

(ii) Beginning with the distribution of funds from the first month's operation of the Morongo Tribal Bingo Enterprise, the MORONGO BAND shall reimburse the MANAGER one-twelfth (1/12) of the total documented and agreed upon costs incurred for construction of the facility and for the start-up of the Enterprise. This payment shall be made only to the extent that there are funds available to make such payment after the MORONGO BAND has its minimum monthly guaranteed income or such portion thereof as is available from the monthly profits of the Tribal Bingo Enterprise. If the full amount of funds necessary to make this repayment of one-twelfth (1/12) of the expenses incurred is not available from the profits of the Enterprise after the Morongo Band has received its monthly minimum guaranteed payment, then the construction repayment, or any part thereof not available, shall be deferred until after such time as all the other monthly payments have been made at the rate of one-twelfth (1/12) of the total costs. Any amounts not paid in the first twelve payments due to any inadequacy in proceeds shall be made on a monthly basis with no monthly payment to exceed one-twelfth (1/12) of the total costs of construction and start-up, beginning after the initial twelve (12) payments are due.

B. The MORONGO BAND's obligation to repay the expenses incurred by the MANAGER for the construction and start-up of the Morongo Tribal Bingo Enterprise shall only exist to the above extent and only for so long as the Morongo Tribal Bingo Enterprise is in

operation. If the Morongo Tribal Bingo Enterprise ceases operations as the result of a decision of a court of competent jurisdiction or by the operation of any applicable legislation, or for any other reason, the MORONGO BAND's liability for the repayment of the facility construction expenses and start-up costs shall cease; provided, however, that if, after terminating the Tribal Bingo Enterprise prior to the expiration of this Agreement, the MORONGO BAND reinstitutes Bingo anywhere on its Reservation within ten years of the date of this Agreement, the Contract shall be reinstituted for any portion of the term still remaining at the time of cessation of Bingo activity.

7. *MANAGEMENT DUTIES OF THE MANAGER:* In managing the Enterprise, the MANAGER shall perform the following duties:

A. The MANAGER shall provide the logistical support to the Enterprise, including but not limited to, the furnishing and the management of the materials and equipment. In addition the MANAGER shall provide the Enterprise with an initial cash contingency reserve of $250,000, included within the contemplated $1,250,000.

B. The MANAGER shall provide the Enterprise with personnel management, including the selection, training and supervision of all employees of the Enterprise; provided, however, that the employees to fill the top managerial positions within the Enterprise shall be selected jointly by the Business Committee of the MORONGO BAND and the MANAGER. The salaries of personnel shall be included in the operating expenses of the Enterprise.

C. The MANAGER shall provide for the services of a licensed, bonded and insured security force sufficient to reasonably assure the safety of the customers, personnel, moneys, and property of the Enterprise. The cost of such security services shall be included in the operating expenses of the Enterprise.

D. The MANAGER shall be responsible for the administration, management, maintenance, and operation of the Enterprise, except for those functions specifically assigned herein to the MORONGO BAND or to the Management Committee described below. The MANAGER is hereby granted the full authority, in its capacity as the agent of the MORONGO BAND, to carry out its responsibilities set forth in this Agreement subject to the general policy supervision of the Management Committee and the MORONGO BAND.

8. *MANAGEMENT COMMITTEE:* There shall be established a Management Committee which shall be responsible for overseeing the overall operations of the Morongo Tribal Bingo Enterprise, and for setting policy for the management of the Enterprise. This Committee shall consist of six (6) members which shall include three (3) representatives of the MORONGO BAND designated by the Business Committee of the Band and three (3) representatives of the Manager. This Committee shall meet as often as necessary but not less than once per month. Its functions will include establishing and overseeing the general policies of the Enterprise concerning employment, working conditions, employee training, expenditures, construction, improvements, procurement, publicity, and similar matters, but not the day-to-day operation of the Enterprise.

The three members of the Management Committee who are the MORONGO BAND's representatives shall be compensated for the time spent on the Bingo Enterprise and any expenses incurred therefor. Payment for this purpose, in an amount to be agreed upon by the parties to this Agreement, shall be made by the MANAGER directly to the MORONGO BAND as an operating expense of the Enterprise, and the MORONGO BAND shall make payment to the individuals involved who shall be responsible only to the MORONGO BAND.

9. *ANNUAL OPERATING BUDGET:* The MANAGER shall prepare an annual operating budget and submit it to the Management Committee for its review and approval at least thirty (30) days in advance of the agreed-upon fiscal year, except during the first year when the budget shall be presented to the MORONGO BAND's Business Committee for its review and approval at least thirty (30) days prior to the opening for business of the Bingo Enterprise. After the initial budget is approved, the Management Committee shall approve any changes made to said budget during the course of the year. At the beginning of each subsequent budget period, the Management Committee shall participate in the development of the budget and shall submit it along with its recommendations to the Business Committee of the MORONGO BAND for its review and approval. The budget shall be submitted to the Business Committee at least thirty (30) days before the beginning of the budget period and shall be reviewed and approved with any changes deemed necessary by the Business Committee within ten (10) business days of receipt of said budget. Failure of the Business Committee to re-

spond to the proposed budget in the time allowed shall be deemed an approval of said budget.

10. *ACCOUNTING AND BOOKS OF ACCOUNT:* The MANAGER shall prepare and provide to the MORONGO BAND a monthly, quarterly, and annual statement of all sales, revenues, and all other amounts collected and received and all deductions and disbursements made therefrom in connection with the subject Enterprise. The MANAGER shall also hire a mutually agreed upon independent accounting firm to perform an annual audit of the same. The costs so incurred shall be operating expenses of the Enterprise.

The MANAGER shall maintain full and accurate books of account at the MANAGER's office on the Morongo Indian Reservation in Riverside County, California. The books shall be kept on a cash basis and the records shall be maintained using generally accepted accounting principles. The MORONGO BAND, acting through its duly-authorized Business Committee, shall have the right to inspect, examine, and copy all such books and supporting business records during normal business hours. Such right may be exercised through an agent, employee, attorney, or independent certified public accountant acting on behalf of the MORONGO BAND. The MORONGO BAND shall have the right to review the fiscal operations at any time and to independently audit said books at reasonable intervals. The costs of up to one (1) such independent audit in any twelve (12) month period shall be included as an operating expenses of the Enterprise.

11. *CASH MANAGEMENT:* The MANAGER shall install systems for monitoring of all funds, which sys-

tems shall be submitted in advance of implementation to the Business Committee of the MORONGO BAND for its approval. Any changes in such systems will be subject to review by the Management Committee after commencement of the operation. The MANAGER shall have the right and duty to maintain and police its system for cash management in order to prevent any skimming of receipts or loss of proceeds from the Morongo Tribal Bingo Enterprise, and the MORONGO BAND shall have the right to inspect and oversee this system at all times. The MORONGO BAND shall also have the right to designate a person of its choice to be present and count or oversee the counting of the cash revenues on a daily basis who shall be paid as are the tribal representatives on the Management Committee.

A. The MORONGO BAND and the MANAGER shall agree on a bank for the deposit and maintenance of funds. The parties shall establish two (2) accounts in said bank, one for payroll and the other for a general account. Prior to each payday transfers shall be made from the general account sufficient to cover that payroll for all employees of the operation. The MANAGER shall retain all responsibility and authority for making all payments from the payroll account and shall provide the MORONGO BAND with a monthly report on payroll expenditures including the names and job titles of the individuals employed by the Tribal Bingo Enterprise. The general account shall require one signature each from the MORONGO BAND's duly authorized representative(s) and one from the MANAGER's representative(s). Each month, from the general account, all direct and indirect costs of the operation shall be paid, as provided herein;

and, the balance each month, excepting a reasonable reserve determined by the Management Committee, shall be divided and distributed between the MORONGO BAND and the MANAGER as provided in this Agreement.

B. All proceeds from the operation of the Morongo Tribal Bingo Enterprise, the sale of related products, snack bar revenues, and all other activities on the premises shall be deposited daily in the general account maintained jointly by the parties to this Agreement immediately after the termination of business. If the daily operation terminates in the late evening or early morning hours, all funds shall be deposited in the night depository of the selected bank. Adequate security shall be provided in transporting the funds to the bank; provided, however, that such funds as may be necessary for the next day's operation shall remain on the premises in a safe to be installed for this purpose. The parties hereto agree to obtation a transportation service to effect the safe transportation of the daily receipts to the bank.

12. *DIVISION OF PROFITS:* Within ten (10) days after the end of each calendar month of operation, the MANAGER shall calculate and report to the Business Committee of the MORONGO BAND the expenses and profit of the Enterprise for the previous month's operations; said profit shall consist of the amount by which the revenues generated exceed the operating expenses during said month. Operating expenses shall include, but not be limited to, salaries of personnel, employees and contractors; prizes; materials and supplies; utilities; repairs and maintenance of the subject property; employee benefit payments; insurance and bonding; advertising; accounting fees; security costs; costs to the MORONGO BAND

and the MANAGER for legal fees related to this Enterprise incurred for obtaining advice, preparation of documents, and litigation; equipment; trash removal; other expenses designated as part of the operating expenses in this Agreement; and such other expenses approved by the Management Committee and the Business Committee of the MORONGO BAND from time to time as operating expenses of the Enterprise. Repayment for construction and start-up costs as provided herein shall be considered part of the net operating expenses of the Tribal Bingo Enterprise, but shall not be paid until after the MORONGO BAND is paid its minimum monthly guaranteed payment as provided in Paragraph 4, above. Any profits remaining thereafter shall first be utilized for repayment of the start-up and construction costs, then for the repayment of any accrued amounts due the MANAGER, and finally for the division of profits between the MANAGER and the MORONGO BAND, with the MORONGO BAND receiving seventy-five percent (75%) of the profit and the MANAGER receiving twenty-five percent (25%) of the profits as fully set forth in Paragraph 4, above.

Not later than the fifteenth (15) day of each month, the MANAGER shall pay to the MORONGO BAND its minimum monthly guaranteed payment as provided in Paragraph 4 above. Next payment shall be made of the monthly payment due for the construction and start-up costs as provided herein to the extent that funds are available. Finally, to the extent that any funds remain availbale, the remaining funds shall be divided such that the MANAGER receives a return of any payment shortfall and its cumulative twenty-five percent (25%) of the profits after construction and start-up costs are repaid and

the MORONGO BAND receives seventy-five percent (75%) of said profits.

13. *EMPLOYMENT:*

A. In order to maximize the benefits of the Tribal Bingo Enterprise for the MORONGO BAND, the MANAGER shall place special emphasis on the recruiting, training, and employment of members of the MORONGO BAND and other qualified Indians. Preference in employment shall be given to qualified members of the MORONGO BAND, especially for the top management positions in the Moringo Tribal Bingo Enterprise. The MANAGER shall also give preference to qualified members of the MORONGO BAND when selecting contractors or subcontractors and when hiring personnel for the construction of the project, if such personnel are available. The wage scale for all employees shall be commercially reasonable after considering the job involved and the rates prevailing in the area and shall be established by the MANAGER, reviewed by the Management Committee, and approved by the Business Committee of the MORONGO BAND. The MANAGER shall make all reasonable efforts to provide on-the-job training for the employees and opportunity for upward mobility in employment as an operating expense of the Enterprise.

B. A background check shall be done on each applicant prior to his/her being hired and no individual with a felony conviction or ties to organized crime shall be employed by the Enterprise; provided, however, that the Management Committee may grant a waiver of this condition regarding felony convictions for members of the MORONGO BAND if the tribal member has been con-

victed of a felony which is completely unrelated to the work that he/she would do for the Tribal Bingo Enterprise. All individuals to be hired for positions which involve the handling of money must meet the minimum requirements for obtaining bonding; and all such employees shall be bonded upon their commencing employment with the Morongo Tribal Bingo Enterprise unless the Management Committee waives this requirement because of the expense involved.

C. The MANAGER shall adopt personnel policies, including a grievance procedure, in order to establish fair and uniform standards for the employees of the Enterprise. The policies shall be approved by the Management Committee and the Business Committee of the MORONGO BAND prior to the commencement of operations.

D. None of the shareholders in CBA shall be compensated for their efforts or for any work which they perform in their capacity as the MANAGER of the Morongo Tribal Bingo Enterprise, other than the percentage of net profits which they receive as the MANAGER of the Enterprise. A waiver of this provision may be granted by the Business Committee of the MORONGO BAND only if special circumstances arise in which it would be in the MORONGO BAND's best interest for such a waiver to be granted.

14. *INSURANCE:* The MANAGER shall maintain public liability insurance in the amount of at least $1,000,000 per person and $5,000,000 per occurrence for all activities on the subject property, and property damage insurance with liability limits of not less than $100,000 per occurrence with an aggregate coverage of $2,000,000.

Contractor shall also keep the buildings, improvements, and contents therein insured for their full replacement value against loss or damage by fire, with extended coverage endorsement, and robbery, theft, malicious mischief and vandalism. The exact nature and extent of such coverage shall be agreed upon by the parties. Both the MORONGO BAND and the MANAGER shall be named as the insured in all policies and the Manager shall supply the MORONGO BAND with written evidence satisfactory to the MORONGO BAND of such coverage. The costs of said insurance shall be deemed a part of the net costs of operation.

15. *USE OF PREMISES:* The MANAGER shall not conduct or allow to be conducted on the premises any illegal activities or any activities not approved by the MORONGO BAND.

16. *AUTHORITY TO EXECUTE:* Each party warrants to the other that it has full authority to execute this Agreement.

17. *NO PRESENT LIEN OR LEASE:* The parties to this Agreement agree and expressly warrant that this Agreement is not a lease and does not convey any present interest whatever in the building or property on which the Tribal Bingo Enterprise is located or any proprietary interest in the Enterprise itself.

18. *BEST EFFORTS:* MANAGER shall devote its best efforts to the fulfillment of its duties outlined in this Agreement.

19. *TERMINATION:*

A. TERMINATION FOR CAUSE: The MORONGO BAND may terminate this Agreement in the event

that the MANAGER commits or knowingly allows to be committed any theft or embezzlement. Either party may terminate this Agreement if the other party commits or allows to be committed any material breach of this Agreement. A material breach of this Agreement shall include, but not be limited to, a failure of either party to perform any duty or obligation on its part for any twenty (20) consecutive days within any 365-day period. Neither party may terminate this Agreement on grounds of material breach unless it has provided written notice to the other party of its intention to declare a default and to terminate this Agreement, and the defaulting party fails to cure or takes steps to substantially cure the default within twenty (20) days of receipt of such notice. The discontinuance or correction of the material breach shall constitute a cure thereof. In the event of termination for cause if the MANAGER is at fault, the MORONGO BAND will be paid all sums owed to it as of the date of termination, and the MANAGER will execute appropriate releases and will hold the MORONGO BAND harmless and undertake to indemnify it for any from all claims, notices, demands, liability, liens, mechanics' liens, stop notices, and similar contingencies which may follow such termination. If the MORONGO BAND is at fault, the MANAGER and BAND shall retain all moneys paid to and them and the MANAGER shall be compensated for construction and start-up costs to the extent that funds are available and to the extent that such costs have not previously been paid. Any funds remaining shall be divided seventy-five percent (75%) to MORONGO BAND and twenty-five percent (25%) to MANAGER, if the MORONGO BAND was at fault.

B. INVOLUNTARY TERMINATION DUE TO CHANGES IN APPLICABLE LAW:

It is the present understanding and intention of the parties that the establishment and operation of the Enterprise contemplated herein conforms to and complies with all applicable laws. In the event that this Agreement or the Enterprise is determined by the Congress of the United States, the Department of the Interior or a court of competent jurisdiction no longer to be lawful, the obligations of the parties hereto shall cease, and this Agreement shall be of no further force and effect; provided that the MANAGER shall indemnify and hold the MORONGO BAND harmless against all liabilities of any nature whatsoever created by or remaining after the termination of this Agreement; *provided further* that in the event that this Agreement and/or operation of the Enterprise is determined by the Congress, the Secretary of the Interior or a court of competent jurisdiction to be unlawful, the funds of the Enterprise remaining after final payment of operating expenses shall be distributed as follows: the MANAGER and the BAND shall retain all moneys paid to them and the MANAGER shall be compensated for construction and start-up costs to the extent that funds are available and to the extent that such costs have not previously been paid, provided that the MANAGER will execute the appropriate releases and will hold the MORONGO BAND harmless and undertake to indemnify it for any and all claims, notices, demands, liability, liens, mechanics' liens, stop notices, and similar contingencies which may follow such termination. Any funds remaining after the MANAGER is compensated for start-up costs shall be divided

with seventy-five percent (75%) given to the MORONGO BAND and twenty-five percent (25%) given to the MANAGER. The MORONGO BAND shall be entitled to retain title to all Enterprise fixtures, improvements, supplies, and equipment located on the MORONGO INDIAN RESERVATION.

20. *INTERFERENCE IN TRIBAL AFFAIRS:* The MANAGER shall not directly or indirectly interfere with, become involved in, or attempt to influence the internal affairs of the MORONGO BAND, its members, or its tribal government. The breach of this condition shall be grounds for immediate termination of this Agreement.

21. *SOVEREIGN IMMUNITY:* By this Agreement, the MORONGO BAND of Mission Indians does not waive, limit, or modify its sovereign immunity from unconsented suit.

22. *TIME IS OF THE ESSENCE:* Time is of the essence in the performance of this Agreement.

23. *NOTICE:* Any notice required to be given pursuant to this agreement shall be delivered by certified mail, return receipt requested, addressed to the MORONGO BAND as follows:

Tribal Chairman
Morongo Band of Mission Indians
11581 Potrero Road
Banning, CA 92220

with a copy to:

Barbara E. Karshmer, Attorney at Law
Frampton, Karshmer & Kesselman
925 N Street, Suite 150
Fresno, CA 93721-2256

and to MANAGER at

CBA Development Co., Inc.
4536 Wilshire Blvd., Suite 103
Los Angeles, CA 90010

with a copy to:

Roland Childs, Attorney at Law
Hertzberg, Childs & Miller
9454 Wilshire Blvd., Suite 500
Beverly Hills, CA 90212

24. *ASSIGNMENT, TRANSFER, OR ENCUMBRANCE:* This Agreement may not be assigned, transferred or encumbered by the MANAGER except with the written consent of the MORONGO BAND which retains the absolute right to deny consent to any proposed assignment, transfer, or encumbrance.

25. *CONSENTS AND APPROVALS:* At all places in this Agreement where approval or consent or other action of the MORONGO BAND is required, the MORONGO BAND's consent or approval will be granted or denied by formal action of the Business Committee of the MORONGO BAND and any such consent shall not be unreasonable withheld. In providing such consent or approval, the Business Committee will abide by the MORONGO BAND's written and unwritten custom and tradition in consulting with its membership, if necessary, regarding any action which it takes in regard to this Agreement.

26. *COMPLIANCE WITH TRIBAL REGULATIONS AND ORDINANCES:* In carrying out its obligations under this Agreement, the MANAGER agrees to comply with the duly-enacted Bingo Ordinance of the Morongo Band and with any and all other regulations or ordinances of the MORONGO BAND that are presently in effect or which may in the future be enacted.

27. *SUBMISSION TO THE U.S. DEPARTMENT OF INTERIOR:* This Agreement shall be submitted to the United States Department of Interior, Bureau of Indian Affairs for its review and approval. The parties agree to make any changes to this Agreement reasonably requested or required by said Department.

28. *EXECUTION IN DUPLICATE:* This Agreement is being executed in two duplicate originals, one to be retained by each party. Either is equally valid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CBA DEVELOPMENT CO., INC.

By: /s/ Douglas C. Bunce

MORONGO BAND OF MISSION INDIANS

/s/ Robert Martin
Tribal Chaiman

/s/ Hue Kab
Business Committee Member

/s/ Illegible
Business Committee Member

/s/ Paul Martin
Business Committee Member

/s/ Charles Martin
Business Committee Member

/s/ Illegible
Business Committee Member

/s/ Rodney Matthews
Business Committee Member

Approved by the Secretary of Interior
or his duly-authorized representative:

_____

_____ Date

10. REPORT, NATIONAL GAMBLING REVIEW COMMISSION

FINAL REPORT
of the
COMMISSION ON THE REVIEW OF THE
NATIONAL POLICY TOWARD GAMBLING
Washington: 1976

COMMISSION MEMBERSHIP

Charles H. Morin, Chairman
Attorney, Washington, D.C.

Ethel D. Allen, D.O.
City Councilwoman-at-Large
Philadelphia

Philip Cohen
Executive Director
National Legal Data Center

James M. Coleman, Jr.
Prosecutor, Monmouth County, N.J.

Joseph A. Gimma
Investment Banker, New York

Robert List
Attorney General, State of Nevada

Charles F. Phillips, Jr.
Professor of Economics
Washington and Lee University

Senator John L. McClellan
Democrat, Arkansas

Senator Howard W. Cannon
Democrat, Nevada

Senator Hugh Scott
Republican, Pennsylvania

Senator Robert Taft, Jr.
Republican, Ohio

Representative James M. Hanley
Democrat, New York

Representative Charles I. Wiggins
Republican, California

Representative Sam Steiger
Republican, Arizona

Representative Gladys Noon Spellman
Democrat, Maryland

James E. Ritchie
Executive Director

Marilu Marshall
Deputy Director

Former Members: Representative Charles J. Carney (D-Ohio); former Senators Edward J. Gurney (R-Fla.) and Marlow W. Cook (R-Ky.); Representatives John E. Hunt (R-N.J.) and Lawrence J. Hogan (R-Md.); and Judge David D. Dowd, Jr., former prosecuting attorney, Stark County, Ohio.

FEDERAL ENCLAVES

Indian Reservations

* * *

The Indian tribes once were separate and sovereign nations within what is now the United States, but through conquests and subsequent treaties, tribal units were placed under Federal protection, within specified grants of land. These grants in land, or reservations, were deemed to be "distinct political communities" subjected, by the Constitution, to exclusive Federal jurisdiction. States were therefore preempted from enforcing their laws within the reservation's territorial boundaries.

The Constitution delegates to the Federal Government the "power to regulate Commerce . . . with the In-

dian tribes." The commerce clause, however, has not been found to be the sole basis for Federal police power over Indian reservations, as it is in the regulation of such offenses as gambling. Additional police power in this instance stems from the Federal authority to regulate the territories, a power which is not dependent upon specific constitutional grant. This Federal power supersedes any tribal ordinances that may be in conflict with it, thereby nullifying such ordinances. Federal prohibitions do not, however, constitute the total regulatory body of laws by which Indian reservations are governed. The Assimilative Crimes Act permits the use of State statutes to cover offenses not covered by the Federal criminal code, and tribal governments are permitted to regulate offenses committed among Indians on the reservation.

While the Federal Government has retained a guardianship role vis-a-vis the Indian population, it is under no obligation to continue this role. Congress is the sole arbiter of when and how the present Federal role is to be changed or terminated, the Indians themselves are powerless to alter or suspend the existing relationship. In withdrawing Federal control, Congress can cause jurisdiction over the reservations to be delegated to the States, and, in fact, has taken steps in that direction by passage of Public Law 83-280. This statute granted civil and criminal jurisdiction over resrvations to the States, subsequent amendments included the requirement that tribal consent to a State's assumption of jurisdiction be given before such jurisdiction could apply. The statute contains specific language reiterating the principle that the respective State's criminal code would have the same

weight on Indian territory as it has throughout the rest of the State. While this statute was passed with an eye toward eventual termination of federal supervision in this area, it also made clear that such termination was to be effected gradually.

Perhaps the most controversial issue arising from Public Law 83-280 concerns taxation. The statute itself contains explicit language prohibiting State taxation of Indian concerns. Nevertheless, States have shown an understandable interest in taxing the Indians' economic activities in view of their increasing statute in the political and economic life of the State. State attempts to levy any such taxes have, to date, failed.

Of the myriad of Federal statutes dealing with prohibition of gambling activities, only one specifically prohibits a single gambling activity on an Indian reservation; the legalization of all other games is dependent upon State law. This statute, part of the Johnson Act, states:

It will be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special martime and territorial jurisdiction of the United States as defined in section 7 of Title 18.

The Commission fails to see any reason why, as to this particular activity, Indian reservations should not receive treatment consistent with State law. It does not consider the nature of the offense to be such as to warrant its continuing to be singled out as an area of federal jurisdiction while other types of gambling activity on the

reservation are subject to applicable provisions of State Law. The continuation of this policy is neither in the national interest, nor is it protective of one State's rights from infringement by a sister State. Consequently, the Commission recommends repeal of 15 U.S.C. 1175. To do so would then place all gambling activities under the control of applicable State law. The Commission further recommends that legal gambling activity of any kind conducted on an Indian reservation pursuant to State law should be subject to the same rate of taxation as that same activity conducted elsewhere in the State. That activity would presumably be subject to the same licensing and regulatory requirements whether conducted on or off a reservation. Therefore, the licensing privilege should be accompanied by the correlative duty of equal taxation.

* * *

BINGO

American women play a very strange game. Can't recall its name, but it's played in a large hall by several hundred women seated at tables with a number of small cards before them. A man on an elevated platform constantly calls out numbers to which the women listen attentively, never saying a word. Then suddenly one woman shouts at the top of her voice: "Bingo!" and all the others exclaim, "Aw nuts!"

Scarne's Complete Guide to Gambling

Although the above account is that of a bemused Englishman's first reaction to bingo, it represents a common—and inaccurate—perception of one of America's most popular and widely played gambling pastimes. Contrary to popular belief, bingo cannot be categorized sim-

ply as a parochial, low-stakes game played by middle-aged and elderly women.

It is, rather, a billion-dollar industry (much of it illegally whose popularity permeates all aspects of American society, and the abuses of which often go undetected or unremedied.

Bingo nonetheless holds a unique position among the various forms of gambling: Many people do not consider it true gambling at all. Because bingo sessions are usually run or sponsored by charitable organizations—churches, synagogues, service clubs, and the like—people tend to attribute to it a respectability they would not accord, say, numbers playing. Bingo operations—lawful or not—function so openly and are so numerous that many players never question their legality. And some would argue that the amount of money an average player spends on an evening of bingo—less than $6.00—is too small to be considered "gambling"; rather, they see it as an "entertainment" fee.

Background

The origin of bingo is obscure: It has variously been reported as an English, Dutch, or Swedish game. One gambling authority says it developed from the Italian parlor game of lotto, which in turn was based on the Italian National Lottery, now 450 years old. Another source claims it evolved from keno, a lottery popular in New Orleans in the 1840's. Revised forms of lotto and keno are still played today.

Whatever its origin, bingo has undergone a number of changes over the years. The 1863 American edition of

Hoyle lists bingo as a game played with dominoes. In the 1920's, movie theaters had bingo nights, which were actually raffles intended to increase business and circumvent State laws prohibiting such activities. At these raffles, the winner of a drawing would shout "Bingo!" to claim his prize.

Mechanics

Modern-day bingo, also known as beano, is a simple game, based entirely on chance and played until a participant wins. The games are often held in lodges, halls, church basements, and permanent "bingo parlors." Long tables are set up, and at each seat bingo cards and covering chips are placed. The cards, made of cardboard or paper, are printed with five rows of five squares each. One letter of the word BINGO appears over each of the vertical columns. All of the squares contain a number, except the "free" center square. Numbers 1 through 75 are used. The "B" column usually contains any five numbers between 1 and 15; the "I" column, any five between 16 and 30; and so on.

The purpose of the game is to cover enough called numbers to form a pattern—usually a vertical, horizontal, or diagonal line, or four corners. There are also many special games and gimmicks designed to increase participation.

In a typical game, the announcer calls a letter and number; randomly selected from 75 ping-pong-type balls printed with a letter from the word BINGO and a number from 1 through 75, in the same groupings as the cards. As these numbers are called, the balls are placed on a

BEST AVAI

master board containing all the letters and numbers to form a record of the game.

The two most popular devices used to insure random selection of a ball are the bingo cage, a wire mesh sphere which is twirled to mix the balls and then stopped to allow one ball to fall out of the bottom, and the bingo blower, a glass enclosure in which the balls are kept aloft by a jet of air until one ball falls through a small opening.

When a person—or persons—shouts "Bingo!" the announcer and a floor person check the cards against the master board. If the cards tally, the winner or winners receive their prizes and a new game begins. As many as 90 or more games may be played at a single session.

Volume of Business

Because so much of bingo playing is illicit, and because reporting procedures are unreliable or nonexistent even in some States where the game is legal, a total estimate of money wagered on the game is impossible to make from official sources. So, too, for different reasons, is an estimate of the total revenue raised by the States through bingo licensing and taxation. An official of one State, however, has said privately that bingo there was a "huge" business, unpoliced, underreported, and answering only to the whims of local authorities. An indication of the success of the game can be seen in New York, where in 1 year the reported handle alone was nearly $200 million (from which the State realized more than $1 million in revenue).

From projection of data in its household survey, the Commission estimates that about $1.7 billion is spent—

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legally and illegally—on bingo in a given year. The average player bets $5.93 per session.

Bingo Regulation

At present, 34 States sanction bingo (see table 5-61). The methods, by which they license, tax, and regulate the game vary widely, however.

TABLE 5-61.—STATES PERMITTING BINGO

State	State approval	Local approval	License required	License fee	Noncharitable organizations	State tax	Total handle	Revenue to State
Alaska	yes		yes	$10 p.a.		N/A	N/A	N/A
Arizona	yes		yes	$75 p.a.	yes	N/A	N/A	N/A
Colorado	yes		yes	$50 p.a.		N/A	$11,937,450	$131,641
Connecticut	yes		yes	varies		N/A	N/A	N/A
Delaware	yes		yes	$15 p. event		N/A	$8,310,396	$39,780
Florida	yes		no	———		N/A	N/A	N/A
Illinois	yes		yes	$200 p.a.		10%	N/A	$6,842,946
Iowa	yes		yes	$10 p.a.		N/A	N/A	N/A
Louisiana	no	yes	yes	none		N/A	N/A	N/A
Maine	yes		yes	$2 p. week		N/A	$5,437,697	$24,210
Maryland	no	yes	yes	varies	yes	N/A	N/A	N/A
Massachusetts	yes		yes	$50 p.a.		5%	$73,333,897	$3,667,992
Michigan	yes		yes	$100 p.a.			$84,000,000	$189,260
Minnesota	no	yes	no		yes	N/A	N/A	N/A
Montana	no	yes	yes	N/A		N/A	N/A	N/A
Nebraska	yes		yes	$10 p.a.		10%	$5,364,563	$536,456
New Hampshire	no	yes	yes	$10 p. month	yes	N/A	N/A	N/A
New Jersey	no	yes	yes	$10 p. event	yes	N/A	$93,549,474	$331,375
New Mexico	yes		no	———		N/A	N/A	N/A
New York	no	yes	yes	$12.50 p. event		N/A	$182,312,388	$1,122,554
North Carolina	no	yes	no	———		N/A	N/A	N/A
Ohio	yes		no	———		N/A	N/A	N/A
Oklahoma	no	yes	yes	$25 + $5 p.a.		N/A	N/A	N/A
Oregon	yes		no	———		N/A	N/A	N/A
Rhode Island	yes	yes	yes	$10 p. event		N/A	N/A	N/A
South Dakota	yes		no	———		N/A	N/A	N/A
Tennessee	yes		no	———	yes	N/A	N/A	N/A
Vermont	yes		no	———		N/A	N/A	N/A
Virginia	yes		yes	varies		N/A	N/A	N/A
Washington	yes		yes	varies		N/A	$20,894,381	$ 73,130
Wisconsin	yes		yes	$10 p.a. & $10 p. event		N/A	$ 4,444,048	$345,859
Wyoming	yes		no	———		N/A	N/A	N/A
Kansas	yes		yes	$25 p.a.		yes	$10,658,252	$588,249
Nevada	yes	yes	yes	varies	yes	yes	N/A	N/A

About the only consistent factor in the States' treatment of bingo is their requirement that licensing be restricted to operations that are charitable in purpose. (A few States allow county governments, labor unions, political groups, or service clubs to conduct games as well.) In Michigan, for example, bingo licenses are issued only to "Religious," "Educational," "Veterans," "Fraternal," "Service," and "Senior Citizens" groups. (It should be noted that despite the ostensibly philanthropic motivations attributed to bingo sponsors, only 2 percent of the players who responded to the Commission's survey said they played bingo because it was in a "good cause." And in Nevada, where bingo is a commercial game like any other, the participation rate is higher than elsewhere.)

The authority for licensing and controlling bingo playing also varies widely among the States. In most, the State government is the licensing agent; in others, the county or other municipal government issues the permits; in Rhode Island and Nevada, authority is divided between State and local government.

The amount of the license fee, its distribution to the State and the community, and the manner in which it is imposed also differ greatly in the bingo States. Where there are license charges, annual fees range from $10 (e.g. Iowa) to $200 (e.g. Illinois). In some States, the operator is charged a fee every time a bingo event is held. In few cases does the fee appear to be prohibitive.

Gambling Survey Results

The National Gambling Commission's survey of American gambling practices and attitudes revealed that

bingo is a popular form of gambling whose appeal transcends specific sex, age, income, and education delineations. Nineteen percent of the population played bingo in 1974 (table 5-62). Of all types of gambling, legal and illegal, only lotteries enjoyed a higher participation rate than bingo, yet the bingo handle in 1974 was double that of the lotteries.

* * *

Because of the game's wide appeal, it is difficult to develop a profile of the "average" bingo player. Although the stereotype of a bingo player is a woman, 16 percent of the male population played bingo in 1974—more than bet on the horses or placed sports bets with bookies. The stereotypical bingo player is middle-aged or elderly, yet the survey results show that players under 25 had the highest proportional representation among all age groups, while players over 65 had the lowest.

Yet the stereotype is not entirely a myth. If all bingo players are divided into three groups on the basis of frequency of participation, the popular image of the bingo player appears among the 8 percent who play once a week or more. Middle-aged and elderly women, widows, and those earning under $5,000 a year are highly represented among the "heavy" bingo players. But among the great majority of players—the 75 percent who play less than once a month—distinctions on the basis of age, sex, income, marital status, and education are obscured.

Following are additional highlights of the survey results:

1. Bingo and Family Income (table 5-63). The average annual wager by bingo players earning under $5,000

was $142 in 1974; players in all but one of the other income categories wagered less than $100. The average annual wager for all players combined was $74. Only lotteries and sports cards had lower stakes.

Bingo is one of the more regressive forms of gambling, that is, those in the lower income groups spend proportionately more of their income playing it than those in higher income categories. It is less regressive, however, than numbers or sports cards, and about the same as State lotteries.

2. Reasons for Playing (table 5-64). Despite bingo's association with charity, most people do not play for charitable reasons. Bingo is viewed more in "social" terms than other forms of gambling; most players play "to have a good time," or for excitement or challenge. Less than a fourth of all players cited the chance to make money or to get rich as a reason for their playing. Among nonplayers, lack of interest was the primary reason given for not participating. About a third of the nonplayers cited money reasons. Adverse moral, legal, and societal consequences of playing bingo were rarely mentioned.

TABLE 5-64.—REASONS FOR PLAYING AND NOT PLAYING BINGO

Reasons for playing	Percent
Interest:	75
Good time, excitement, challenge Pass the time	
Money:	23
Make money, get rich	
Reasons for not playing	**Percent**
Lack of interest	94

Don't know or think about it, other things to do	
Money:	35
Costs too much, waste of money	
Moral Consequences	3
Legal Consequences	2
Social Consequences	4
Availability	5

NOTE: Participants choose one, two, or three reasons from among several reasons provided for playing or not playing.

3. Legal Versus Illegal Bingo (table 5-65). Fully 44 percent of those living in States where bingo is illegal believe it is legal, making bingo the form of gambling about which public knowledge is least accurate. The confusion may be partly due to the game's close association with respected community institutions such as churches and charitable groups and to the fact that a number of States permit charitable exemptions to their lottery and bingo prohibitions.

Of all forms of gambling, only bingo received majority support for legalization among people who live in States where bingo is currently illegal. Twenty-two percent of the nonplayers who did not know that bingo was legal in their State said they would play if it were legal. This represents a large potential market for the game.

* * *

BINGO AND THE LAW

Despite bingo's popularity as a charity fundraiser and its reputation as a harmless pastime, it has been the object of abuse by a number of sources: Illegal parlors resort to tricks to circumvent the law or openly defy it. Racketeers are thought to control bingo games—legal and illegal—in a number of urban areas. Skimming and other scams are practiced by both organized groups and shady independent operators. Some bingo players have devised elaborate cheating schemes.

Law enforcement officials appear to be of two minds regarding illegal or crooked bingo: One group feels that it is not a problem—and indeed, it often is not—or that the public wants it and the police have the responsibility of enforcing the law to the extent that the public desires. The other group, which feels crooked or illegal bingo is a problem, must often contend with an apathetic public and no investigative resources. It is probably fair to say that regarding illegal bingo operations, the police are damned if they do and damned if they don't.

ILLEGAL BINGO PARLORS. Some operators, to circumvent licensing requirements or statutory prohibitions, merely avoid using the word "bingo" and charge a fixed fee for a night of entertainment. That entertainment might consist of recorded music and "free" bingo games. At least one State has ruled that bingo is allowed if it is provided free during a paid entertainment. Other operators simply conduct open—and illegal—games, either moving from place to place and chancing the occasional police raid, or paying police officers to ignore the violation. In any event, penalties for bingo violations in most

States are minor and can be looked upon as a business expense.

RACKETEERS. Bingo takes in nearly $2 billion a year. Laws regulating bingo may be unenforced or ambiguous, and it is easy to rake off substantial unreported amounts of money taken in at the games. Thus, it is apparent that national or local organized criminal groups would be interested in bingo as a source of illicit income. A number of cities report that a single commercial bingo operation runs the majority of charity-sponsored games.

Some States have legalized bingo and set up control boards not to increase State revenues but to provide State supervision of games thought to be controlled by organized crime—particularly organization-sponsored games run by commercial operations. Legalization gives the States control over licensing and access to bingo records.

Even where the police want to investigate bingo operations thought to be infiltrated by racketeers, public sentiment often is against it. The bingo-playing public feels that an innocuous source of pleasure is being taken from them while the police ignore "real" crimes such as robbery. Churches and social organizations often sponsor the games despite the crime involved; the money these games bring in may be their charity's only source of support—even if the charity is not receiving its fair share from the dishonest bingo operators. State and local governing bodies are unwilling to spend the money needed to finance a thorough investigation of an area's bingo operations. And laws surrounding bingo may be so ambiguous that cases actually brought to court are often dismissed, and the few penalties imposed are rarely more than minor fines.

SCAMS. Skimming—the practice of underreporting income from games and pocketing the difference—is thought to be the biggest problem regulatory agencies and Law enforcement officials have with bingo. Skimmed money is tax-free. Not only do the Federal, State and local governments not receive their share of taxes from that income, but State or local governments that base their license fees on the income from a bingo parlor or that receive a percentage of the take also lose revenues. And the charities these games ostensibly support, as well as the players themselves, lose.

Skimming is easy to do and hard to detect because bingo players pay cash. To prevent skimming, both the number of players and the number of cards they play would have to be counted for each game. With thousands of games played at hundreds of bingo sessions each week in a given locality, it would be practically impossible for a municipality—even assuming it had the resources and the inclination—to check each operation. (A private survey of three bingo sessions in a large mid-western city found one session's take underreported by $1,000; the second by several hundred dollars; and the third to be even.)

Most bingo scams are simple: Not all games are reported to the regulatory authority, and the bingo operator merely pockets the money from the unreported ones. Skimming is even easier if the floor workers are involved: For example, after a collector turns over the money picked up from the tables, the counter (who tabulates each game's income) records a figure lower than the amount collected and keeps the difference. To avoid playing out the large jackpots advertised to lure players, some operators hire a player who works from a card recorded earlier with the

announcer. The announcer calls the numbers from that card to insure that the "plant" wins and the jackpot remains with the house.

CROOKED PLAYERS. Far fewer in number than the scams devised by bingo operators but much more intricate are the scams devised by individuals to cheat at bingo. Although most bingo payoffs are low, special jackpots of $1,000 or more might make the scheming seem worthwhile. One elaborate scam was developed by a family of three who, working with thousands of hidden memorized cards, were able to win some of the higher stake games by substituting winning cards from their hidden stacks. Another ploy involved the use of transparent card markers with numbers stuck to their undersides. If the player needed a certain number to win, he placed the corrected numbered marker on the card. Since the checkers read the numbers through the markers, the false number escaped detection. Today, the use of serialized and specially printed cards makes cheating by a player extremely difficult, and such cheating is not considered a problem.

CONSEQUENCES OF LEGALIZATION

The Commission's original research—especially its survey of gambling in America—has uncovered two facets of bingo playing that may contradict earlier perceptions of the game: Bingo is big business—nearly $2 billion annually—and it is played extensively throughout the United States where it is legal or not.

These findings will enable the States to evaluate their policies toward bingo and perhaps to change them. Following is a discussion of the issues surrounding bingo and

the possible consequences of increased regulation of the activity.

Although bingo is now legal in 34 States, regulation of it varies widely: Only Nevada and Maryland allow straight commercial bingo; in most other States, bingo may be played only for charitable purposes. Almost all the States require bingo licenses, but few have license control boards—licenses are merely filed with a State or local government office and are available, usually for a nominal fee, to anyone with an ostensibly charitable purpose. Most bingo operations keep few or sketchy records; often the statutes themselves do not require a strict accounting of income. Many times the charities these games are conducted to support receive only a small fraction of the money taken in. Law enforcement generally ignores illegal or dishonest bingo games: The few police efforts to crack down on these games are often resisted by the public, who want to play and see no harm in it; and most municipal or State budgets have few funds to spare for investigations. Many policemen believe that illegal bingo is a "victimless" crime, too insignificant to merit intensive enforcement.

It seems clear that few States have systems of bingo regulation that are effective or productive in terms of supervision, revenue raising, or law enforcement. Thus, States wishing to change their bingo policies find little to guide them.

In formulating bingo policy, the States must examine what their goals are, whether the benefits of effective regulation are worth the cost, and whether stronger regulation serves the public interest.

If the goal of increased regulation is to control illegal or dishonest bingo, States should realize that the effort requires considerable increases in money and manpower, as well as the active support of the community and its law enforcement personnel.

If revenues are the goal of bingo regulation, the States must be aware of how much money the games can be expected to generate. As with other forms of legalized gambling, there is a point at which operating costs and taxation decrease the payoff to the public to such an extent that the public turns to illegal games where the payoffs are higher.

If both ends—crime control and revenue—are desired, it may be possible to finance law enforcement efforts with the taxes received from the games. Whether this would still enable the State to have money left over for other purposes must be determined.

The Commission feels that the States should be aware of these issues as they develop their policies toward bingo. To that end, the Commission has drafted a model reguiation designed to insure a realistic, practical, and orderly approach to bingo for those States wishing one; that model regulation appears in an appendix to this Report.

CONCLUSIONS AND RECOMMENDATIONS

The Commission perceives little difference between "charitable bingo" and commercial bingo. Charitable bingo as it exists in most States is charitable only in that it is sponsored by statutorily sanctioned organizations such as churches and service clubs. It is operated, however, like a commercial operation: It offers large cash

prizes; it promotes elaborate games designed to induce participants to buy more—and often more expensive—ibngo cards to increase their chances of winning; and, most important, it is open to everyone, not just to members of the sponsoring organization. Many charitable bingo occasions are run by commercial bingo operations, not by the members of the sponsoring organization. The Commission's survey has found that people play charitable bingo for the same reasons they might participate in commercial bingo: Bingo provides entertainment and a chance to make money. The charitable aspects of the game are relatively unimportant. For these reasons, the Commission recommends, for regulatory purposes, no distinction be made between charitable and commercial bingo.

As stated earlier, bingo is a billion-dollar industry played by millions of people in every area of the country, whether it is legal or illegal. Bingo is also the most loosely regulated—or unregulated—form of gambling in America and as such is the object of numerous abuses which affect law enforcement, government revenues, and the players themselves. In addition, bingo is a highly regressive form of gambling, making it imperative that the State or local governing body take steps to control the game. Because of bingo's pervasiveness and the income it generates, the Commission recommends that those States allowing bingo adopt and actively implement regulations to insure that the games are honestly run.

Although it may be possible for a State to obtain certain revenues from legal bingo while actively enforcing the law concerning it, the Commission believes that where a choice must be made, a State should concentrate its re-

sources on the law enforcement aspects of bingo regulation. A minimal State tax on all bingo games could pay for the enforcement of bingo regulation. Whether a higher tax, which would provide revenue in addition to law enforcement, would still enable the game to attract players despite the necessarily lower payout rate is unknown. Unscrupulous practices such as skimming, as well as the suspected involvement of organized crime groups in some bingo operations, also support the contention that tax revenues from bingo should be concentrated on police efforts. The office of the State Attorney General should be responsible for enforcing the regulations.

Bingo's reputation as a harmless form of fundraising is not entirely deserved: Too often the charities these bingo operations ostensibly support receive only a minute portion of the handle from the games, and players who feel they are victims of unfair or fixed games have no redress. Therefore, the Commission recommends that all bingo regulations state what percentage of the handle must go to charity and what percentage of the handle must be paid out in prizes. The Commission further recommends that each bingo organization be required to obtain a bond with the State that could satisfy all adjudicated claims agains it. It also recommends that bingo operators be licensed by the State treasurer, as is the case in Massachusetts.

In order that any bingo regulatory scheme be administered most effectively, the Commission recommends that the States adopt an enabling act, where permitted by the State constitution, that would provide for a single bingo director. (That enabling act could be modeled after the model State Gaming Act, which will be included in an ap-

pendix to this Report.) The director would supervise the conduct of bingo within the State by promulgating regulations based upon the model provided. Under the enabling act, the bingo director would be appointed by the chairman of the executive body of the State gaming board. To be eligible for the position, a person must be of such character and reputation as to promote public confidence and trust in the administration of bingo within the State, and make a complete disclosure of assets and liabilities to the gaming board.

11. TASK FORCE REPORT

TASK FORCE REPORT
ON
LEGALIZED GAMBLING
TO
HONORABLE EVELLE J. YOUNGER
ATTORNEY GENERAL
STATE OF CALIFORNIA

June 21, 1971

Sacramento, California

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* * *

A considerable number of states have legalized bingo in one form or another. Of the states questioned on this matter, the bingo was found to be relatively free of criminal involvement.

Most states have experienced problems in regard to administrative control and operation of bingo games. However, these problems have usually been ironed out in time and with corrective legislation. The following comments regarding the history and development of legalized bingo in New York is somewhat typical of the development of the activity in other states.

Prior to 1958 the laws prohibiting bingo were only given token enforcement by the local enforcement agencies. As is true throughout the country, many religious and charitable organizations conducted bingo games openly for purposes of raising funds for religious activities.

In New York, bingo was legalized in 1958. With the advent of legalized bingo, racket minded promoters inevitably infiltrated vulnerable organizations and received the lion's share of the profits. The respectable name of the charity was used as a front and provided a buffer against legal prosecution.

Techniques employed by professional operators were to provide the finances, equipment, workers, and in some cases, suitable public halls, and to set up a full operation under a protective cloak of respectability. In exchange, the organizations were given a small share of the profits or a meager fixed fee.

Despite corrective legislation, the promoters found additional ways to insinuate their interests into the charitable activities. Their schemes eventually evolved into providing the services for acquiring licenses and completing the paper work necessary to set up the games. In this manner, they still managed to collect a large share of the profits.

The problems which evolved shortly after the legalization of bingo were basically as follows. Public hearings conducted in New York City by the State Lottery Control Commission reveal that the legalized game of bingo was rifled with abuses, corruption, and violations of law. Another vice was the misappropriation of inestimable sums that were intended to support religious, charitable, and civic causes.

New regulations and statutory correction of abuses closely followed the disclosures of the public hearings. The commission noted that the enactment of new legislation, rules, and regulations alone would not effectively eliminate the problems which had been encountered. Deliberate and purposeful enforcement by all responsible agencies of the states and municipal governments was required. The proper conduct of bingo was recognized to have rested primarily in the hands of the members of licensed organizations conducting bingo games.

In New York, the primary responsibility for the enforcement of legalized bingo comes within the jurisdiction of the State Lottery Control Commission (to be differentiated from the Division of the Lottery under the Department of Taxation and Finance). Aside from a short period after the program's inception, strigent regulations and effective control have finally resulted in a successful endeavor which is devoid of the "hoodlum element."

In other states, the evolution of legalized bingo may not have progressed through such a difficult period as that in New York, but the basic administrative and statutory problems have been much the same. The general opinion of both law enforcement and public administration authorities interviewed seems to confer approval on the legalization of bingo for civic, religious, and charitable purposes. On the whole, they felt that a properly regulated and conducted bingo game presented no law enforcement problems of substance.

The only abuses of legalized bingo which eventually became problems for law enforcement were those mentioned above. It is generally felt by the Task Force that these problems could be avoided should bingo be legalized in California, by establishing certain minimum standards for the conduct of bingo games. Among these standards should be the following:

1) Uniform state policy regarding the type of organization which may be allowed to conduct games;

2) Statewide (as opposed to county or municipal standards for regulation and conduct of games;

3) Organizations allowed to conduct games limited to those exempted from the payment of state in-

come tax under Revenue and Taxation Code section 23701 (d); *and* qualifying as charitable corporation under section 170 (c)(2) of the Internal Revenue Code of 1954.

4) Licensing of organizations intending to conduct bingo games by the chief of police or other chief law enforcement official in the political subdivision; or the sheriff of the county in which the game is to be conducted, if there is no small political subdivision;

5) No one other than the organization licensed to conduct games should be allowed to operate the games, or otherwise participate in the promotion, supervision, or other phase of the game for which payment for services would normally be contemplated;

6) Limits should be placed upon the frequency of games to be sponsored by one organization;

7) No individual, corporation, partnership, or organization, other than the corporation licensed to conduct games, shall be allowed to hold a financial interest in the conduct of the game;

8) A statewide supervisory agency should be established to insure the integrity of the games and the uniformity in regulation of the games.

These standards are not by any means all-inclusive, however, they should form the basis for ferreting out problems before they become major concerns. These standards should also receive further study (See part III, section A.).

* * *

12. DEPARTMENT OF INTERIOR LETTER

GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the United States General Services Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.

Signature
/s/ Franklin W. Burch
Name
Franklin W. Burch
Date
12/20/83
Title
Chief, Scientific, Economic, and Natural Resources Branch
Name and Address of Depository
National Archives—NNFN
8th Pennsylvania Avenue, NW
Washington, DC 20408

(SEAL)

UNITED STATES
DEPARTMENT OF THE INTERIOR

Office of the Secretary
Washington 25, D. C.

June 29, 1953

My dear Mr. Miller:

This will refer to your request for a report on H.R. 1063, a bill "To amend title 18, United States Code, entitled 'Crimes and Criminal Procedure', with respect to State jurisdiction over offenses committed by or against

Indians in the Indian country, and to confer on the State of California civil jurisdiction over Indians in the State''.

I recommend that this bill be enacted if its title and text are amended to conform to the enclosed draft.

The bill would extend the criminal laws of the State of California to all the Indian country within that State. Concurrently, it would withdraw the entire State from the operation of the Federal Indian liquor laws. Finally, it would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved.

Approximately 30,000 Indians live in the State of California. They are divided into many different groups, widely dispersed throughout the State. Their lands include a large number of small rancherias and allotments, which are also widely scattered. The State lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in title 18, United States Code, section 1151, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was conferred by the Act of October 5, 1949 (63 Stat. 705).

The applicability of Federal criminal laws is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of title 18, United States Code. As a practical matter, the enforcement of law and

order among Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. The Indians of the Hoopa Valley Reservation and the Yuma Reservation have a form of tribal law enforcement, but none of the other reservations in the State has any means of preserving law and order. Consequently, there is a serious hiatus in law enforcement authority that can best be remedied by conferring criminal jurisdiction on the State. The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A like policy should be applied to the rest of the State. In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063. No opposition to the enactment of the proposed legislation was voiced by any of the Indian groups. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have also indicated their approval.

Proposed legislation similar to H.R. 1063 has been discussed with the Governor of California and he has in-

dicated his approval of the objective of the proposal. The Legislature of California, by Senate Joint Resolution No. 29, has recently memorialized the Congress to enact H.R. 1063.

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as these laws are of general application to private persons or private property. The revision would also make it clear that Indian tribal customs and ordinances would continue to be applicable to civil transactions among the Indians insofar as these customs or ordinances are not inconsistent with the applicable State laws. By so doing the predominance of State authority would be assured, but with a minimum of interference with Indian control of Indian affairs.

The enclosed draft is designed to perfect H.R. 1063 in a manner consistent with its basic intent. The only major substantive difference is the omission of the provisions that would have excluded the entire State from the operation of the Federal Indian liquor laws. There is no doubt that the Indians of California are as prepared to be subjected to the State laws regarding intoxicants as they are to be subjected to the other laws of the State. However, general legislation to repeal, in whole or in part, the Indian liquor laws is now before the Congress, and it seems preferable to deal with the subject in that manner

rather than in a bill, such as H.R. 1063, having a different primary objective.

In large measure the criminal jurisdiction provisions of the enclosed draft are identical with those of H.R. 1063. The subsection that would have reserved to the Federal courts concurrent jurisdiction over offenses by or against Indians has been omitted as its effect would be to make persons in the Indian country subject to two different, and possibly conflicting, systems of law. For like reasons, a subsection has been added that would render inapplicable in California the Federal criminal laws which apply to offenses committed by or against Indians within the Indian country. Finally, the subsection relating to the protection of trust or restricted Indian property and of Indian fishing and hunting rights has been revised in an effort to make its provisions as precise and certain as possible.

The provisions of the enclosed draft relating to civil jurisdiction are based on those of H.R. 1063, but have been recast in a form that would permit them to be incorporated in the general body of the judicial laws as now codified in title 28 of the United States Code. These provisions are designed to give the State of California jurisdiction over civil controversies and transactions involving Indians to the fullest extent consistent with the discharge of Federal responsibility for the protection of trust or restricted property. The State and its courts could not take any action that would affect the status of this property in any way or that would improperly deprive the Indians of any of the benefits therefrom. However, once the trust or restriction was terminated by the United States, the juris-

diction of the State and its courts would automatically attach.

Both H.R. 1063 and the enclosed draft would repeal section 1 of the Act of October 5, 1949 (63 Stat. 705), which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Agua Caliente Indian Reservation. The enactment of H.R. 1063, applicable to the entire State, should be accompanied by the repeal of section 1 of this Act in order to make the same civil and criminal jurisdictional statute applicable to all Indian country within the State.

Since I am informed that there is a particular urgency for the submission of the views of the Department, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made concerning the relationship of the views expressed herein to the program of the President.

Sincerely yours,

/s/ Orme Lewis
Assistant Secretary of the Interior

Hon. A. L. Miller, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington 25, D. C.

Enclosure

13. WALLACE DECLARATION

JOHN K. VAN DE KAMP, Attorney General
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Attorneys for Defendant-Intervenor

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (Tx)

CABAZON BAND OF MISSION INDIANS, A Federally Recognized Indian Tribe,

Plaintiff,

v.

COUNTY OF RIVERSIDE; STATE OF CALIFORNIA,

Defendants.

and

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

COUNTY OF RIVERSIDE; STATE OF CALIFORNIA,

Defendants.

DECLARATION OF WILLIAM J. WALLACE

DECLARATION OF WILLIAM J. WALLACE

I, WILLIAM J. WALLACE, declare under penalty of perjury as follows:

1. I am a Professor Emeritus of Anthropology at the California State University, Long Beach and have been so since 1970. Further I have earned A.B. and Ph.D. degrees in anthropology from the University of California, Berkeley. University work included undergraduate and graduate courses and seminars in California and western history. I am familiar with the subject matter of this litigation; and if called could testify as follows. A copy of my curriculum vitae is attached.

2. I have prepared a report describing Indian cultural gambling traditions in California. A copy of the report is attached. Based on my research, and as described more fully in my report. I conclude as follows:

> "The Indians of California have often gambled intertribally, and, on festive occasions, with other tribes. However, the Indians of California have not traditionally engaged in commercial gambling, or operated commercial gambling establishments. Also, the Indians of California have not, to any significant degree, traditionally engaged in gambling with non-Indians on either a commercial or non-commercial basis."

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 1984 at Redono Beach, California.

/s/ William J. Wallace
Declarant

3.

California Indian Gambling

"Let us gamble," a Yaudanchi Yokuts said and the game began (Kroeber 1925:540). These words or very similar ones were frequently heard in California Indian communities, for gambling was a favorite preoccupation of the native peoples. Women entered into games of chance as heartily as men.

Contests of physical skill between individuals or teams afforded another outlet for the gambler. The participants themselves wagered on the outcome of matches. Additionally, a good deal of betting went on among onlookers.

But to suppose that the native Californians were obsessed with gambling would be wrong because the great majority did not let interfere with their ordinary lives. The average individual played now and again for fun or relaxation. But for a few, gaming became a devouring passion and occupied a good part of their time and thoughts. However, such persons did not form a professionel class of gamblers, for no one gained a full living from the habit.[1]

Games of Chance

Each group had its own traditional games of chance. Nothing is known as to how and when the various forms were introduced to the different tribes. The native peoples believed that they had been played since time immemorial as they were indulged in by mythical personages before mankind arrived.

The playing of the traditional games of chance depended upon individual rather than group initiative. Customarily, a few interested males or females got together and arranged for a match. The village or tribe as a whole never initiated, organized, or ran the contests.

Gaming took place almost anywhere and at any time. But there were limitations. In some tribal groups, it had to be done at a special location. Pomo men, for example, gambled only in the sweathouse (Loeb 1926:215). Women, normally barred from entering this structure, were admitted as spectators while play was in progress. Western Mono males also held their favorite hand game competitions in the sweathouse (Gayton 1948b:269). No special gaming halls, that is buildings designed solely for gambling purposes, were ever erected by native Californians.

Often a game of chance could be indulged in only at a particular time of day or season of the year. The Tachi Yokuts allowed the playing of the men's hand game just at night (Gayton 1948a:22), whereas Yokuts and Western Mono women were forbidden to cast dice after dark (Gayton 1948b:269). Yana men competed in hand game contests only during the fall and winter. The matches had to stop before the oaks came into leaf, lest there be no acorns to gather and to eat (Sapir and Spier 1943:279). By contrast, Eastern Shasta restricted hand game playing to the summer months (Voegelin 1942:99).

There were also individual restrictions. A Pomo man did not gamble if he had a newly born child or his wife was menstrating (Barrett 1952:335), nor did a Coast Yuki whose wife was pregnant engage in games of chance (Gifford 1965:66). No Yurok could begin a contest of any sort

during the important Deerskin Dance festivities until all families that had lost a member during the year had been compensated (Curtis 1924, 13:48).

Games of chance were played with great concentration and gusto. Often a match continued without let-up for many hours, or even for two or three days. Shasta players never slept while a contest was in progress (Holt 1946:314). Atsugewi gamesters, however, occasionally took an hour off to rest (Garth 1953:173).

Gentlemanly conduct was expected. Normally, victories and defeats were quietly accepted, for niceties of behavior, prevented exalting over winning or bemoaning of losses. A Yuki loser graciously said. "Well my friend, you win, I give up." (Foster 1944:196-197). Stephen Powers, a pioneer student of California native culture, remarked, "One thing is praiseworthy about these Indian gamblers, that is the good nature with which they accept their losses. They very seldom quarrel and never fight unless inflamed with white man's . . . (bad water)" (Powers 1877:191).

Nonetheless, an individual who wanted badly to win sometimes resorted to illegal means. Perhaps the most extraordinary thing about this dishonesty was that none of it was regarded as particularly reprehensible. Elder Pomo men boasted how they used to hoodwink opponents (Loeb 1926:234), as did Yokuts cheaters (Aginsky 1943:419). No real penalty was inflicted if cheating was detected; the guilty side, as in Yuki and Pomo society (Foster 1944:195; Loeb 1926:214), merely forfeited the pot. A Yuki Indian expressed the view that play had been more honest in

prewhite times. "But today the object is to cheat whenever possible" (Foster 1944:195).

Big games involving well-known players engendered considerable interest and high excitment. Spectators gathered to watch and to urge on their favorite. And, to place side bets.

In aboriginal times, wagers consisted mostly of shell money, though other valuables were also staked. A bet was always matched by an article of equal value; no odds were figured or given.[2] The wagers ventured were usually quite modest. For example, the regular Tubatuabal bet amounted to the equivalent of $2.00 in shell money (Voegelin 1938:47). But in the intensity of the moment, a gambler sometimes risked all his earthly possessions. A Yurok narrative tells of a man who, having lost everything, even his clothing, pledged his personal liberty (Spott and Kroeber 1942:149). He lost again and became a slave to his adversary. Owens Valley Paiute men are said to have occasionally gambled away their wives or children (Steward 1933:285).

The games of chance were of two types: guessing and dice. Lotteries or any sort of contest in which prizes were determined by lot were unknown. Nor did the native Californians originally have any board games like checkers.[3]

The wagers were placed and won or lost by individuals or, less often, competing teams. The village or tribe as such never put a comon bet, even if the opponents were outsiders. Nor did the political community or any political authority receive any part of the amount risked. Aside from a small percentage paid to a referee or umpire, the

entire sum wagered went to the successful bettor or bettors.

Guessing Games

Guessing games were played almost exclusively by males. Over much of California, the hand game (also known as the grass game and peon) was foremost. Details varied locally, but essentially involved guessing the whereabouts of an "ace" or marked piece. Usually two short lengths of bone or cylinders of wood, small enough to be easily concealed in the hand, were used. One (the "ace") was marked about the center with a band. Two competitors or two opposing sides sat facing one another during play. One contestant shuffled the gaming pieces behind his bank, under a blanket, or between bundles of grass. The opposing side then guessed which hand or grass bundle held the marked one. If the surmise proved correct, the guesser gained a point; if wrong, the opposing side did.

Score was kept with eight, ten or more splints of wood. Quite frequently, as with the Miwok (Barnett and Gifford 1933:206), an umpire dispensed the counters. The umpire received a small percentage of the stakes for his services, but he was not permitted to bet on the outcome of a contest. Usually, play began with a common pile of sticks. Only after this had been depleted did the contestants draw from one another. Play went on until one side gathered in all the counters. More rarely, each side started with half of the sticks.

Success in the hand game demanded expert manipulation of the gaming pieces as well as long practice. The hand game has been characterized as one ". . . in which not sticks and luck but the tensest of wills, the keenest of per-

ceptions and the supplest of muscular responses are matched" (Kroeber 1925:540).

Players resorted to all sorts of antics, stratagems, and false moves to dazzle and confuse their opponents. With the playing went an almost constant singing of special hand game songs. Often, too, a log or plank was thumped with a paddle in time with the singing.

Ways of cheating were many and various. Most commonly, the "ace" was surreptitiously shifted after an adversary had made his choice. A yuki deceiver kept a duplicate set of bones hidden in the loose straw, and by a sleight of hand displayed a piece opposite to that guessed (Foster 1944:195). One Yuki gambler owned a trick pair with both bones marked on one side and plain on the other. When a selection had been made, he showed the opposite side. The same artifice has been reported for the Achomawi (Curtis 1924:13; 145).[4] To prevent trickery at the critical moment, Diegueno players were obliged to attach the bones to their wrists with leather thongs (Waterman 1910:331). Onlookers sometimes assisted a Pomo contestant by positioning themselves behind the players so as to be able to see what move was being made. They signaled the position of the "ace" by means of traditional finger signs (Loeb 1926:214).

A second game, often called "Indian cards", had a more limited distribution. It was the sole guessing game of the northwestern tribes, including the Hupa, Yurok, Tolowa, and downriver Karok. Among neighboring groups and farther eastward it existed alongside the hand game. In playing, fifty or so slender wooden rods, one identified by a black band around the middle, were shuffled behind the back and divided into two bunches. After considerable

deliberation and frequent false or pretended starts, an opponent guessed which hand held the marked splint. Eastward, a few tribes added the feature of rolling the sticks up in grass bundles (Voegelin 1942:101). As in the hand game, score was kept with stick counters.

Singing accompanied the play. A drum made of a box with a cover of leather or hide was also usually beaten (Goddard 1903:6). This drum was not aboriginal.

Opportunities for trickery were not lacking. A good Yurok player knew at all times which hand held the marked splint and sometimes deftly shifted it from one hand to the other following his adversary's guess (Kroeber 1960:236). Clever Chilula gamblers secreted the "ace" under one leg instead of holding it in the hand. Thus, whichever hand was guessed held no marked stick (Driver 1939:399). While their opponents were engrossed in watching for the "ace" to appear, these tricksters slipped it into the pile which had not been chosen.

Also played with a bundle of thin sticks was a guessing game that enjoyed popularity in central and northern California. In one of these contests, a player separated a handful of splints from a bundle and held them out to his opponent. The latter had to guess whether the number was odd or even. In a Pomo and Miwok variant, the sticks were counted off by fours, the choice being made whether the residue numbered one, two, three or four, four being equal to none (Barrett 1952:341; Barrett and Gifford 1933:268).

Of a different order was a contest in which four sticks, two long and thick, two short and thin, were employed. The four were lined up beneath a flat basket, in one of four

possible arrangements. The object was to guess the grouping. "Four stick" was played along with other guessing games by tribes living in north central and northeastern California. It has been reported for the Modoc, Achomawi, Atsugewi and Northern Paiute (Voegelin 1942:10; Stewart 1941:398).

Native Californians indulged in a few additional guessing games. In one of these, two competitors simultaneously drew a combination of short and long lines on the ground, shielding their drawing with a basket held in the other hand. A man won if his pattern of lines matched his opponent's. Matching lines was played by Miwok, Yokuts, and Western Mono groups (Driver 1937:82). In a Mohave game, a bit of wood was hidden in one of several little piles of sand and the other side tried to divine its placement (Drucker 1941:131). Another, quite simple, game involved secreting a tiny stick or a pebble between the fingers and the palm of the hand. An opponent tried to determine under which finger it lay. This was played by the Nisenan (Powers 1877:332-333), Achomawi, Atsugewi (Voegelin 1942:100), and perhaps other tribes living in north-central California.

Dice Games

Gaming with dice was almost everywhere predominantly a female diversion. The contests depended on pure chance, the random fall of one or more objects. No real element of skill entered into them. Nor was there any opportunity for chicanery. Usually two women contended, but two or more might make up a side.

With one exception, the dice had two faces. Most commonly used were split sections of wood, four to eight or

more inches in length. A set numbered four, six or eight. Flat on one side and rounded on the other, the staves were cast from the hand onto a circular basketry tray, against a stone, or on the ground. The combination of flat and rounded faces determined the score. In southern California, and sometimes elsewhere, the staves were colored.

Dice fashioned from shells of native Black Walnut were widely employed in the San Joaquin Valley and adjacent foothills (Driver 1937:83; Aginsky 1943:423). They were also used in the southcentral and central California coastal regions (Harrington 1942:27). The nut was split in half, the kernel removed, and the halves filled with pitch or asphaltum. Bits of shell were pressed into the soft filling. The number of dice varied from six to eight. Now and again, split acorns or acorn calyxes were substituted for walnut shell.[5] The count was based upon how many shells fell mouth up and mouth down.

In northwestern California, four mussel shell disks, each with a shiny surface from the shell's inside and a rough one from the outside, were dropped from the hand (Driver 1939:34). One pair was somewhat larger. If all four disks fell with the same side up, whether rough or smooth, or if the size pairs were uniform but opposite, a point was scored (Kroeber 1960:234). Four beaver teeth, marked on one side and plain on the other, were used by Modoc dice players (Ray 1963:129-130).

As in the men's guessing games, score was most often kept with sticks and a contest terminated when one side won all the counters. A tally counter sometimes handed out the sticks. A Wukchumni Yokuts score-keeper was "paid a little" (Gayton 1948a:91). Along the eastern fringe

of the state and in a few Yokuts groups a counting circuit replaced the pool of sticks (Aginsky 1943:423; Driver 1937:83; Riddell 1960:77-78). The circuit consisted of 28-32 wooden pegs stuck in the ground so as to form a curving line or half circle. Sticks placed between the pegs indicated positions of the several players.

Female gamblers tended to wager only small sums. For example, a Wukchumni Yokuts dice player bet shell money, a basket, or some object that her opponent specifically desired that rarely exceeded $2.50 in value (Gayton 1948a:91). A 1772 account of Southern Valley Yokuts dicing mentions that each contestant wagered "some little article appropriate to woman's use" (Priestley 1933:75). However, some females did play for very high stakes. Between women of wealthy Wiyot families the sums wagered were large (Curtis 1924:13, 78).

Less ambitious than the men's guessing games, dicing contests attracted scant public attention. Quite often, they were pick-up affairs, engaged in at odd intervals when females found a few free moments. Also, there appear to have been relatively few restrictions on playing. Menstruating and pregnant women, for instance, were not barred from watching, or, for that matter, participating (Gayton 1948a:91).

A single, four-sided die was cast by central Californians. This comprised an unworked deer or elk astragalus. The value of a throw depended on which of the bone's four sides fell up. Any number of persons, male or female, played (Barrett 1952:354). Apparently, a deer's knee bone or, following white contact, a cow's footbone was occasionally substituted for the astragalus (Gifford and Kroeber 1937:147; Harrington 1942:271).

Games of Physical Skill

In all parts of California gambling was a regular feature of contests that required individual dexterity, speed, or strength. Bowmen competed either for accuracy or distance in archery contests. Frequently the stakes were only arrows, but shell money or other valuables were sometimes bet. In northwestern California, big wagers were laid on the result of intervillage wrestling matches. Footraces for speed or distance often attracted betting. The Kamia ventured horses, blankets, and money on a grueling footfall race in which two contestants cast or kicked wooden balls by foot (Gifford 1931:45). The distance covered was two to three miles and back to the starting line. Northern Paiute and Achomawi men laid bets on shot putting contests in which a heavy rock was put (Stewart 1941:400-401).

To the Mohave and the Yuma, hoop-and-pole was considered the means of gambling best befitting a man (Kroeber 1920:2 2). In this sport, a small string-wound hoop was rolled and long poles were slid over the ground so as to fall, if possible, on or under the hoop as it came to rest. Hoop-and-pole or something akin to it was played elsewhere in California, but with considerably less intensity. Interestingly enough, the Yurok forbade betting because hoop-and-pole had a mythical connection and was as much a ritual as a game (Kroeber 1960:232).

Of field sports, shinny, a sort of hockey, was the favorite for betting as competition brought members of different villages or even tribes into opposition. Among the Cahuilla, social divisions within the tribe contended (Bean 198:380). Shinny matches were rough and hard-fought. The Yuki claim that in the early times the game

and played purely for sport; only in post-white times did small-scale gambling creep in (Foster 1944:197).

In all of these sports, individual and team, participants and spectators placed bets. Teammates pooled their wagers and, if victorious, divided the stakes. A small percentage of the sum risked often went to an umpire, who oversaw the match and enforced the rules.

Gambling Luck

Throughout California gamblers sought to gain good fortune and to ward off ill luck by magico-religious means. There were many ways in which this was done.

In several parts of California, serious gamblers went on deliberate guests for supernatural aid. A Pomo searched for something unusual such as a mountain plant growing in a valley (Loeb 1926:216). When he found one, he took the leaves and recited: "lucky streak—happen me—win—will happen I." The supplicant always left a small offering, perhaps eight small beads, at the spot.

More stringent quests were also undertaken. A Shasta gambler spent five nights beside a sacred lake in the mountains (Curtis 1924:13,125). Here he swam in the cold water, laid on a bed of stones, ate little, scratched his flesh and rubbed a certain root into the wounds. At all times he had to keep his thoughts firmly fixed on the purpose of his quest.

Supernatural help came more easily to Mohave gamblers, in dreams during an ordinary night's sleep. When a Mohave man dreamed that he wrestled an adversary and threw him, this meant success in gaming (Wallace 1947:155). To the Diegueno hoop-and-pole player, the hoop

was woman of whom he dreamed. If she liked him, he won, no matter how the pole was thrown (Spier 1933:355).

Certain rocks, roots, or even living creatures were thought to bestow good luck. A "lucky rock," a strange looking pebble or one that resembled a familiar object like a pestle, brought a Pomo gambler success (Barrett 1952:335). Feathers of certain birds, and angelica root (*Op.cit.*:328) or a bit of wood blackened by lightning (Loeb 1926:216) did likewise. To a Yuki gamester an unusual rock or a lizard with a forked tail was a potential luck charm (Foster 1944:196). But for best results it had to be doctored by someone who knew the proper procedures and correct invocations. The Surprise Valley Paiute held a horned toad or a shiny, bluish-black insect "like a fly only about an inch long" to be of help (Kelly 1932:169).

Charged with extraordinary power, charms were potentially dangerous to women, children, and the ill. Contact with them could bring either illness or death. For this reason a Surprise Valley Paiute gambler seldom employed his horned toad or insect talismen because, "If one used these charms while playing with a sickly person, that person might die. Both charms are dangerous; they are bad, at the same time they are good" *(Ibid)*.

Gamblers carefully prepared for a match. Almost always a man avoided sleeping with his wife or another woman, because of a widely-held belief that gaming success and relations with the opposite sex were incompatible (Kroeber 1920:277). On the day of a match a Pomo contestant followed a strict regimen. He rose early, bathed in cold water, sang gambling songs, and rubbed lucky rocks on his body (Barrett 1952:336). A Yuki gambler bathed

in cold water and fasted all day (Foster 1944:196), whereas northwestern Californians recited special formulas for success. The words of a Karok formula recount how a gambler got ready for play (Gifford and Kroeber 1980:294). Kamia men sometimes took narcotic Jimsonweed before a match (Gifford 1931:46).

Certain actions and restrictions also accompanied the actual gaming. To bring luck, a Diegueno hand-game player rubbed a powder made from dried flowers of a particular herb on his face and breast, and furtively threw a little on the fire which burned at one side (Waterman 1910:332). He also tried to jinx his opponent. The tails of small snakes were cut off dried and pounded into a "powder." Thrown into the fire, it was thought to "poison" the other side "a little," forcing them to give up the bones quickly. Tarantulas and trap-door spider "powder" served the same purpose. Yuki players might be "doped" by poisoners during a game (Foster 1944:196).

Negative elements surrounding game frequently included fasting. A Pomo gambler neither ate nor drank while engaged in a match (Barrett 1952:334); Karok players never smoked (Harrington 1932:254). Restrictions frequently extended to non-players, especially females. Under no circumstance was a Yuki or a Pomo woman allowed to pass behind a player in a grass game because she might be menstruating and cause immediate loss of luck (Foster 1944:195; Loeb 1926:215). A menstruating Modoc woman was never allowed to watch a contest (Ray 1963:125). While a Shasta husband gambled, his wife had to be careful what she ate (Dixon 1907:443). Dry fish and acorns were her only foods. Too, she drank only water in which acorn-meal had been stirred.

Gambling in Society and Culture

Games and gambling enlivened practically every social or ceremonial occasion. At Wintu gatherings, games of chance provided the biggest attraction (Du Bois 1935:43). Contests of prowess and skill, dancing, singing, and feasting all formed part of the festivities, but they represented mere intermissions in the seemingly interminable gambling games. The greatest opportunity for Death Valley Shoshone gaming came after the pine-nut harvest when families met for a fall ceremony that constituted more of a social than a religious affair (Wallace and Wallace 1979:33).

Intensive gambling characterized practically all inter-village-or-tribal gatherings. Representatives of different communities or tribes competed in games of chance. Western Mono gamblers made an annual trek to Yosemite Valley to play against Southern Miwok rivals (Curtis 1924, 14:137). Shinny games between villages or tribes heightened interest and attracted heavy wagering.

Native Californian saw no incongruity in combining gaming with their most sacred ceremonies. One day of the Hupa White deerskin Dance was given over to gambling (Goldschmidt and Driver 1940:126). Players representing the upper and lower ends of Hoopa Valley contended in "Indian cards" and women occasionally cast dice. Archery contests in which bets were laid on the outcome took place while a Karok priest was performing preliminary rites for this same ceremony (Curtis 1924, 13:62). Hand games accompanied the important Ghost Ceremony of the Pomo (Loeb 1926:215), while two men from different social divisions engaged in "matching lines" on the last day

of the Tulare Lake Yokuts Annual Mourning Ceremony (Gayton 1948a:22). All sorts of contests followed this solemn Yokuts ritual which honored the year's dead (*Op.cit*:44). Throughout the night preceding the final dramatic act—the burning of images of the deceased—of the Pass Cahuilla Ceremony for the Dead, men competed in hand games around campfires (Strong 1929:29).

California Indian mythology was replete with gambling episodes. Supernatural beings played and presumably invented the same games played by the Indians who followed them. "Gambling at Dentalium House," a Yurok myth, told how a young Pekwon man won at "Indian cards" (Kroeber 1976:402-403). In a Mohave epic, Gambling Boy competed in hoop-and-pole, though not very successfully (Kroeber 1951:78-82).

Luck came to mythical gamblers in various ways. The Hupa told a series of stories about finding a supernatural creature which gave the finder luck (Wallace 1948:354-355). An oft-told tale of this same tribe recounted how a man acquired good fortune through a harrowing quest (Curtis 1924, 13:183). Gilak, a cannibal being, bestowed luck on a Pomo gambler (Barrett 1933:186-187). An interesting Costanoan Indian story combined elements of native and Christian belief (Gifford and Block 1930:302-303). Fruito, an inveterate gambler, pledged his soul to the captain of the graveyard for a little lucky bond. With its help Fruito won all his opponents' goods. But, after a month, the captain collected his due.

The wagers mentioned in the myths are exceedingly large or fabulous. Dug-from-the-ground, a Hupa supernatural, defeated his adversaries at shinny by means of a

magical stick fashioned from blue stone by his grandmother and won ten strings of dentalium shell money, besides otter furs, foxskins, and blankets (Goddard 1904:149). A Karok tale recounded how two brothers won enough valuable property to fill two houses (Harrington 1932:187). Gambling Boy of the Mohave epic bet his life three times, and lost it on each occasion (Kroeber 1951:78-82). Eyes, even whole tribes, were staked by Maidu mythical gamblers (Powers 1877:298-303; Dixon 1902:58).

Like the Indians who succeeded them, mythical gamblers were not adverse to cheating. The young man from the Yurok village of Pekwon kept the "ace" hovering over his head in a wisp of fog while he played "Indian cards," and, whichever hand his adversary chose, he shot it into the opposite one (Kroeber 1960:236; 1976:402). A Maidu supernatural had a path through his body by which to pass the gambling bones from one hand to the other (Powers 1877:298; Dixon 1902:52). Unfortunately for him, an opponent became aware of what he was doing, closed up the passage by magical means, and opened one in his own body.

Gambling Today

Very few aboriginal games are still played. The disruption of native life, in some instances a very rapid process, led to their decline. In the mission area, the Franciscan padres, who regarded gambling as one of their charges' "dominant vices" (Geiger 1976:105), hastened its demise by deliberate suppression. All Yuki games of change were dropped simultaneously around 1930 when the Pentecostal faith with its taboo against all worldly pleasures took firm hold (Foster 1944:197).

The hand game is the only one that has survived to any degree. Native people in several parts of California still play it, using traditional equipment and singing traditional gambling songs. The Owens Valley Paiute, the Nisenan, and the Cahuilla number among the tribes which still engage in hand game contests (Roberts 1965:19-20; Wilson and Towne 1978:397; Bean 1978:586). In the latter tribe an expert manipulator of the bones still receives considerable admiration.

The urge to gamble did not disappear with the native games. Card-playing soon replaced aboriginal gaming. At the Hupa White Deerskin Dance, for example, card games gradually superseded multiple-stick contests (Goldschmidt and Driver 1940:126). The card games played by present-day Indians are familiar Spanish-Mexican or American ones.

A new development has been the establishment of commercial bingo parlors at several reservations. These tribally-run enterprises aim at attracting players from surrouding towns and cities by offering large cash prizes. Santa Ynez Indian Bingo (the "most exciting game in the state"), which operates seven nights a week, gives $30,000 in a "galaxy of prizes." Undertakings of this sort find no precedent in native California Indian life and culture. The game itself (a lottery), the building of special gaming halls, tribally-organized gambling and dependence on its revenue as an economic base, attempts to lure outsiders, particularly non-Indians, to play,—all these things fall well outside the boundaries of traditional native gambling. Too, in the process of becoming a commercial enterprise, gaming has lost the social and religious habits and customs that once accompanied it.

William J. Wallace
Redondo Beach, California

FOOTNOTES

1. Professional gamblers have been reported for the Clear Lake Pomo (Gifford 1926:329,379).

2. An eyewitness described the Russian River Pomo betting process (Powers 1877:189-190):
"They first divided off into two equal parties and preceded to make up the grand sweepstake. One Indian would lay dawn a half dollar, and another of the opposite section would cover the same. Another would deposit a blanket or a pair of trousers, and one of the other side would match it with an article agreed to be of equal value. A squaw would contribute a dress, a chemise, or a string of beads, which would be covered as above, and so on until they deemed the stake large enough to be worth their while. It consisted of $8. in silver coin, a large hatfull of strings of shell money, and an immense heap of clothing and blankets, some of them new and very good, and it was worth at least $150."

3. A few board games were taken over and modified by California Indians. On the Tule River reservation. Yokuts played "Indian checkers" with 24 clay pieces, 12 black and 12 red, moved over a flat stone inscribed with a rectinlinear pattern; a game with pegs inserted in holes at the intersections of lines scratched on a flat board was played by the Northfork Mono (Culin 1907:796).

4. In 1915 an ingenious Achomawi had a white man in Redding make him a pair of bones in two sections with a screw in the middle. By unscrewing them a little, he could show a black mark on either one, or vice versa. The deception was detected at the Fourth of July game and a fight was prevented by the sheriff, who happened to be present when the opponents of the dishonest gamster seized the $160 pot (Curtis 1924:13:145-146 n.).

5. Snail shells filled with tar may also have been employed (Priestley 1937:75).

14. HOPPER DECLARATION

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (TX)

CABAZON BAND OF MISSION INDIANS, A
Federally Recognized Indian Tribe,

Plaintiff,

v.

COUNTY OF RIVERSIDE; STATE OF CALIFORNIA,

Defendants,

AND

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

COUNTY OF RIVERSIDE; STATE OF CALIFORNIA,

Defendants.

DECLARATION BY PATRICK H. HOPPER

I, PATRICK H. HOPPER, declare and affirm under penalty of perjury that the foregoing is true and correct:

1. I am a Special Agent for the California Bureau of Investigation and have held that position for 11-1/2 years. In that capacity I have undertaken an investigation of bingo gambling operations by California Indian tribes. My investigation has included a study of the bingo operations currently run by the Cabazon Indian Tribe, as well as those run by other California tribes.

CABAZON BINGO PALACE

2. On Monday, March 19, 1984, I went to the CABAZON BINGO PALACE, 84-245 Indio Springs Avenue, Indio, telephone (619) 342-5600. The BINGO PALACE is located off I-10 at Indio Center Drive, on the east end of INDIO.

3. The BINGO PALACE is a rectangular warehouse-like building estimated at 110 feet wide and 140 feet long; only 3 exit doors were noted. About 25 feet of the right end of the building is taken up with restrooms, food concession and an office. Over these rooms

is a 3-windowed security observation area overlooking the bingo floor. The BINGO PALACE sits on the right side of a dimly lighted, dusty, gravel parking lot. Also sharing the parking lot is a contract Post Office and the CABAZONS' POKER CASINO and Cocktail Lounge.

4. There are two ticket booths at the double glass door add on entrance. The ticket booth directly in front of the door is "L" shaped and the one on the right is rectangular. Passing the ticket booths and turning right is the bingo playing area. The raised stage is directly across the building from the entrance. There are bingo game boards on all 4 walls. On each end wall is a TV Monitor and on the caller's wall is the game diagram board. Also, behind the caller is the pre-pulled Bonanza Bingo board. Signs also stated the size of the do-it-yourself and Bonanza Jackpots.

5. Sitting in front of the caller's stage was a 1984 Dodge D-50 pickup and an ATC (all terrain cycle), another ATC stood up to the left of the caller. A brochure stated a 17' Sylvan Bass Boat with a 25 HP electric motor and trailer valued at $6,771.00 was another prize. The pickup had to go on March 22, 23, or 24 and the boat on March 29, 30 or 31. Prior to the start of the evenings' bingo games, the names of 2 players were pulled from the admission ticket box and they sat on the stage with the caller and were given orange or double cards. Four other players whose names were drawn were given orange cards too. Free coffee was available from urns in the corner near the office.

6. Other than the signs on the BINGO PALACE itself that can be seen in passing on I-10, only a single sign, located on Dillon Road, was seen advertising the bingo games. However, the BINGO PALACE and INDIAN CASINO are being advertised by brochures left in local motel rooms. These materials and others advertising the games are attached hereto as Exhibit "A."

7. In attendance for the Monday evening bingo session were about 300 players. They were seated at some 96 tables in 16 rows of 3 tables on either side of the middle aisle. An average of 8 players were on each half row. On row 5, on the front left side were a middle-aged latin couple, who were later joined by two young latin males. These men had to have the game explained to them. The middle table was shared with a senior citizen couple. The aisle table had 2 elderly women, 1 in a wheelchair, and a middle-aged woman.

8. A goodly portion of the crowd were retired age to senior citizens. Only 6 to 10 blacks were observed. Latins made up an estimated 15 percent of the players; no Orientals were observed. The rest of the crowd was white. At the start of the game it was announced: "You have to be 18 years of age to play." The regular prize or "Blue" package was $18.00. The serialized blue package consisted of an attendance prize ticket; 2 Early Birds, 2 paper cards of 3 games each (6 games total); 4 hard cards of 3 games each (12 games total); 2 super jackpots; 2 paper cards and 2 late game cards, each with 2 games apiece. Available at $1.00 each were the Bonanza Cards. The double prize orange package was $28.00 and the triple prize green was $38.00.

9. Pull tabs were sold from a booth on the left end of the building. The $.50 Super Nevada Club had $1.00-$5.00-$10.00-$25.00 and $100.00 winners for cherrys, lemons, oranges, bells and bars. The $.25 Deluxe B-I-N-G-O pay-off consisted of: $.50 green, $2.00 gold, $5.00 blue, $10.00 grey to $50.00 red. The $1.00 Diamond Cherry Bell pay-off consisted of: $1.00 lemons, $2.00 cherrys, $10.00 plums, $25.00 oranges, $50.00 bells, $100.00 gold bars and $200.00 diamonds. All the cards and pull tabs are "serialized." The pull tabs also had a statement, "For sale or use only in a Bingo Game authorized under California Law and Pursuant to Local Ordinance." Pull tabs obtained from the Cabazon Bingo Palace together with bingo game cards are also included herewith in Exhibit "A."

10. At 1845 hours the 4 warm-up games with jockpots of $20.00 started. These special games were $.50 for a book of 5 paper cards, 3 games each. At 1915 hours the evening bingo began. There were 5 games of Early Bird with a $200.00 jackpot played on paper cards, then the 10 games on the hard cards. The regular games all paid $150.00. The super jackpot of $750.00 consisted of 4 games. After intermission, there were 5 more games of regular bingo with $150.00 jackpots each.

11. The do-it-yourself jackpot of $2,250.00 was not won with 20 drawn numbers, so it continued on for consolation prizes of $300.00 and $100.00. The late game special of 3 games paid $200.00. The Bonanza Bingo sold as a separate card for $1.00 and had a $6,300.00 jackpot. There was no winner at the end of the pre-pulled and pulled 48th number. Consolation prizes of $150.00 and $100.00 were awarded.

12. The Early Bird games were regular and 4 corner, double bingo, letter X, full round robin (outside numbers) and full card or blackout. The super jackpots were regular/4 corner, letter X, small round robin (numbers around free square) and full card. The late game special after the regular game was double bingo and letter X. All the paper cards are serialized, and checked with the verification of the Bingo. In one game the serial number was questioned, but allowed due to quality of printing on the paper cards.

13. The caller for most of the game was a young black male. A female, possibly Indian, and one of the 3 female runners relieved him. Two of the females wore red "BINGO PALACE" T-shirts and the 3rd, a yellow one. The T-shirts were also for sale. An older white male sold the pull tabs. Two young whites were observed in the food service area. Three armed security guards were observed. A young blond, white male in a tan uniform remained on the floor near the office. Two Latin/Indian males in dark blue WACKENHUT uniforms floated, sold tickets and were observed in the security window area. No management "TYPES" were observed.

14. The great majority of the players at the Cabazon Bingo Palace appeared to be non-Indian. Of 300 players about 82 percent were white, 15 percent were Latin or Indian and 3 percent were black.

BARONA INDIAN BONUS BINGO

15. On Monday, March 26, 1984, I attended the BARONA INDIAN BONUS Bingo Games at 1095 Wildcat Canyon Road, Lakeside, telephone (619) 443, 1592.

The Barona Indian Bonus Bingo, billed as "the friendliest bingo in California" is held in the Barona Education Center, approximately 12 miles or 20 minutes north of I-8. The Baronas' are building a new 2,000 seat $2.5 million Bingo Hall at a nearby location. A photograph and a notation stated the slab has been poured and they were working on the walls. The lighted parking lot of the Barona Education Center is half paved and half dirt. Six Barona Indian Bingo Buses were parked on the right side of the parking lot. Entry into the building is through an enclosed porch. On both sides near the double doors are ticket booths fronting the 800-seat bingo playing area.

16. The main playing area is below the caller but on either side of the entrance way are little alcoves, playing areas "A" and "B." To the right or stage area was an area called the "King and Queen" for special bingo players, either chosen by drawing or previous jackpot winners. On the left behind a windowed partition was the "No-Smoking" area.

17. The caller cat on a balcony 12 to 16 fet above the players, opposite the entrance. Game and diagram boards plus TV monitors were on each wall and the caller's wall. Two game and diagram boards plus TV monitors were also in the no-smoking area. A game board for the pre-pulled "Bonanza Blackout" game was above the ticket booth/entrance. The main playing area had 10 rows of 6 tables each with 6 chairs; the no-smoking area had 19 tables. The number of tables with alcoves is unknown. The 6-8 exit doors were painted orange and clearly marked. Above the No-Smoking room was a room with windows, which could be used as a security

observation point to watch the main floor/alcoves. The "free" coffee table and food service area was in the left rear corner. An office was in the right front corner. The crowd was estimated at 650-700 mostly middle-aged to senior citizens. There were very few people in their 20's and early 30's. About 60-80 Indian-Latin-Oriental and 15-20 blacks were observed in the crowd.

18. A middle-aged Japanese lady in the No-Smoking Area, who was playing 9 sets, or 36 games, stated she had won a car last week, but had taken cash rather than the compact car. The "Monday New Car Night Games Rules" state:

> "There will be 21 keys concealed in envelopes. One of these keys will start the new car parked at the entrance. Player who wins the right key, drives the new car home. Main winner of each 15 bingo games picks one key. At the end of game 15, keys will be tried by the 15 winners. If one of these 15 keys starts the car, winner will drive the car home.

The door prize drawing is held after the 15 keys are tried. One door prize per player, if the car is won. The door prize is $300.00.

19. If the car is not won on the first 15 keys: the door prize is one of remaining six keys, MINI-Series will then be ~~played~~ for the remaining 5 keys. MINI-Series cost $5.00 per pack of 5 (3 cards per sheet). "New Car Must Go Every Monday Night, Multiple Winners: If more than one player bingos, winners will spin the wheel: highest numbers spun is winner of key."

20. The car key envelopes are slid down from the caller's balcony on a wire to the ticket booth area. After

the game a large majority of the crowd remained until one of the 15 bingo winners had won the car.

21. Pull tabs were sold from a booth on the main floor between the alcove and No-Smoking area. The serialized $.25 "Nevada Club," and "Red Hot 7's" paid $.50 to $50.00 while the "CRISS-CROSS" paid $.50 to $25.00. The $2.00 "BARONA INDIAN BINGO" paid $2.00 to $1,000.00. The Nevada Club and Red Hot 7's had the California Bear Flag emblem and the notation: "For Sale or Use only in Bingo Game authorized under California Law and pursuant to local ordinance." The Criss-Cross just had the notation. The Barona Indian Bingo pull tab had no notation or emblem. Several types of pull tabs ranging from $.25 to $2.00 were purchased. A $.25 Criss-Cross had a $25.00 diagonal Bar-Bar-Crown Jackpot. The $25.00 winnings, a $20.00 and a $5.00 bill are being held in the D.O.J. vault safe as evidence. These materials together with bingo game cards and literature advertising the games are attached hereto as Exhibit "B."

22. A couple sitting on the aisle next to the window in the No-Smoking room were buying pull tabs by the hands full. On three occasions they purchased $20.00 worth of $.25 pull tabs. Their winnings are unknown.

23. The staff appeared to consist of an equal number of whites and Indians. A white middle-aged, grey haired man with glasses and a young white executive-type who was meeting the employees was observed. Several other whites who seemed to have defined duties were also observed. The "caller's" duties were shared by a young white and an Indian.

24. Four "runners" wearing red aprons were on the floor, 2 were Indian women and one, a male Indian, "Tiny," plus a young blonde female. Another blond female in a yellow apron was seen pushing a coffee serving table and a young male Indian was taking orders for soft drinks. Six to 8 armed uniformed security guards were in and about the hall. A young Indian and "Butch," an overweight middle-aged grey haired Indian mingled among the crowd. On their chest was a small sign "WARRIOR SECURITY"? and a yellow shield was on their left shoulder. All the guards had gold 6-pointed stars. The parking and traffic controllers were seldom inside.

25. The Barona Tribe offers extensive bus service to their games. The cream colored BARONA INDIAN BINGO bus for the beach area/North Park costs $6.00 with reserved seating for bus patrons. The bus leaves Pacific Beach at 10:35 a.m./5:40 p.m. for the 1:00 p.m./6:30 p.m. games. The evening bingo starts at 7:00 p.m. except on Monday when play begins at 6:00 p.m.

26. In the lobby near the ticket booths were boxes with the bingo programs and bus schedules. Also there was a pamphlet entitled: "INDIAN BINGO HELPS INDIAN NATIONS HELP THEMSELVES—PLEASE HELP KEEP INDIAN BINGO ALIVE". The pamphlet tells how bingo is benefitting the Indians through employment, health, education and public works. It also solicits letters to the California Legislature to vote NO on Assembly Bill 2680.

27. The $15.00 Monday Evening Barona Indian Bonus Bingo Package consists of 15 serialized paper

sheets of 4 games each. A second pack costs $13.00 and 3rd or more $10.00 each. There is also a double payoff package for $30.00. The Bonanza Blackout Specials are an extra $2.00 each. On Tuesday through Sunday evening bingo uses both paper and hard cards. They also have Bonanza Blackout and Do-It-Yourself Games.

28. Matinee games start at 1300 hours Tuesday through Sunday. Evening games start at 1900 hours, except Monday, it's 1800 hours. The Monday night games were double and triple bingo, letters T-H-L-X, big and little picture frame, etc., plus blackout jackpots ranged from $50.00 — $75.00 — $200.00 — $250.00 — $300.00. The Progressive Bonanza minimum $10,000 jackpot paid $500.00 as a consolation prize. A new car is won every Monday night.

29. The great majority of the players at the Barona Bingo games appeared to be non-Indians. Of 650 to 700 players 88 percent were white, 10 percent were Latin or Indian and 2 percent were black.

SYCUAN BINGO PALACE

30. On Wednesday, March 14, 1984, I, accompanied by Barbara A. Hopper and Rita Eichenberger, both Department of Justice employees, went to the SYCUAN BINGO PALACE, located at 5469 Dehesa Road, El Cajon, California, telephone (619) 445-6002.

31. We arrived about 1920 hours, during the "Early Bird" game which began at 1915 hours. At the door/booth, with state funds, we each purchased the $15.00 "regular prize package," a "double prize pack-

age'' was available for $25.00. Extra cards and specials were sold during the night for $1.00 each, also ''pull tabs'' at $.25 each 4/$1.00 were being sold by ''runners.'' Each serialized ''Irish Sweepstakes'' pull tab had 5 tabs, instant payoffs ranged from: $.50 3 shamrocks, $1.00 rainbows; $5.00 leprechauns; $10.00 Pot-o-Gold; to $50.00 thoroughbred. The $15.00 regular prize package consisted of 4 hard card game boards of 4 games each (16 games); 3 paper games of 3 games each (9 games); 1 Bonanza bingo card; 1 do-it-yourself card and 1 admission/automobile drawing prize ticket. The double prize package was the same except it was a different color. All the package games were serialized and these serial numbers were checked as part of the payoff procedure.

The Sycuan Bingo Palace is a $1 million dollar warehouse-like building that will accommodate 1,350 high-stake bingo players. The bingo palace, a one-story high ceiling rectangular building, sits ½ mile south of Dehesa Road near the CDF firestation. The paved, lighted, parking lot appears sufficient to accommodate the warehouse's seating capacity. Approaching the double glass doors, one passes three automobiles which are for the Sunday and Monday prize drawings. Inside each door is a ticket booth where the bingo packages are sold. Behind the ticket booth is another booth, where a tub of plastic markers/chips are sold for $1.75. Various colored dobber pens used to mark paper cards are $.75 each. Our purchase was $4.00 for one tub of yellow markers and one each red, green and purple dobber pens. The callers stage was opposite the door and held five persons. Two older Indian women and an older white man all appeared to be doing clerical

duties. Next in line was a young man who appeared to assist the caller who sat at the end of the stage, at the microphone. There were 4 large game boards on the side walls with a TV monitor in each of the four corners. On the end wall was the pre-pulled Bonanza game board. In addition, there were large informational signs about the various games. Formica tables with fixed plastic chairs filled the room row on row, with an aisle down the center.

33. Monitors wearing tan slipover aprons patrolled their aisles to sell additional cards, and to verify bingos. Runners in green slipover aprons circulated selling "pull tabs" and additional games. Also circulating were blue-aproned food service workers. Four armed, uniformed guards were observed during the evening near the doors.

34. The crowd, an estimated 700-800 were adults of all ages. The ethnic makeup was about 80 percent white; 15 percent Latin or Indian; 5 percent Oriental and 1 percent black. About 2/3 of the monitors, most of the runners and food service workers and armed security guards observed appeared to be Indian or Latin. The booth attendants were elderly white women. The Wednesday night "Hot Shot Jackpot" game started with a warmup session at 1845 hours, and the three-hour regular sessions ran from 1915 to 2215 hours.

35. We found seating in the smoking section, under the front right game board. The No-Smoking sections are located on the extreme ends of the building near the restrooms. On either side of us were a young white couple and two black males. Both helped explain how the games were played and what to do next. One young black male, who was playing double cards while buying extra cards

and pull tabs, stated he usually did not spend $60 to $75, as he was then doing, but he had recently won a $6,000 jackpot. In addition to playing his own cards, he watched over our boards and his friends' boards as well.

36. The games were conducted in a quiet professional manner. The numbers were clearly called and then shown on the TV monitors. As the number was called, either it or the next number to be called was exhibited to the room.

37. The 7 regular bingo (hard cards) jackpots were $200 each. The Middle Games Special had 4 payoffs of $100 through $400. Games 8 through 15 were regular bingo games again with $200 jackpots. The Late Game Special (a pink-edged paper game) had payoffs of $100 progressing to $500. All payoffs mentioned are maximum payoffs per game shared among all who bingo at that time.

38. The $10,000 Bonanza Bingo was played from a pre-pulled drawing which the players filled in on their Bonanza cards. If there was no winner on the 48th number the jackpot decreased $2,000. Each additional number was pulled descending to a $1,000 payoff. Some time before the 15th game, the top or original half of the do-it-yourself game must be deposited in locked boxes on the main aisle. Each player writes in any 8 numbers of their own choice on the card. If a player's 8 numbers are blacked out within the first 20 or less numbers called, he wins $10,000. Otherwise, the first consolation prize it $1,000 with a further drawing for the $250 second consolation prize.

39. The last game is for the $1,500 jackpot. It starts off with straightline or 4 corners bingo at $50 and prog-

resses to $150 inside picture frame, $300 outside picture frame and $1,000 blackout. After the regular session ends, at about 2215 hours, there is a late night session from 2230 to 2330 hours of 8 games. The cost to play is unknown. There are various "free-bees" and discounts given out for senior citizens.

40. Rita Eichelberger won a $100 bingo (½ of a $200 jackpot) during the 2nd regular (hard board) game, (probably the 12th game of the evening). When her bingo was declared, a monitor picked up her card and admission ticket. They were taken to the middle of the room, about the center aisle, where both the bingo card's serial number and the bingo were verified with the caller's stand. Ms. Eichelberger's card and ticket were then returned and a few minutes later she was paid off. The $100 prize consisted of 4—$20, 1—$10 and 2—$5 bills paper clipped together. The $100 was seized as evidence after the game, receipted and placed into evidence in the D.O.J. vault safe.

41. The great majority of players at the Sycuan games were non-Indians. Bingo cards, pull tabs and literature advertising the Sycuan games is attached hereto as Exhibit "C."

RINCON ROUNDUP

42. On Friday, March 23, 1984, I attended the RINCON ROUNDUP Bingo games in the 33700 block of Valley Center Road in the Pauma Valley, 16 miles north of Escondidio, California, telephone (619) 749-7557. The bingo games which opened on March 10, 1984, are being held in a 1000 seat two-pole tent until the 20,000 square foot 800-1000 seat high-stakes bingo hall is completed in May.

43. The two-pole tent holds an estimated 125 tables with 8 chairs each in 15 rows and can accommodate 1,000 players. Heating in the chilly big top was 4 heaters on each tent center pole, and a sparingly used space heater in one corner of the tent. Lighting from the overhead string of lights was adequate. There were game and diagram boards and TV monitors in the middle of each wall. The caller sat on a small platform to the right of the entrance. On the left wall was a booth from which the playoffs were made. There were 4 pull tab booths, the $1.00, $200.00 payoff Cherry Bell Special were sold at a booth to the left of the entrance and the right center pole booth. The $3.00, $750.00 payoff High Roller Special was sold at the left center pole booth. The $4.00 pull tab booth on the entrance wall beyond the caller was closed when observed.

44. The staff were all Indian, except one white management type. There were 6-8 female runners in white T-shirts and red baseball hats. Later, red wind-breakers were also worn. Three male maintenance men in gray clothing were also on the floor. "The Hot Corner" payoff booth was manned by 5 women. A uniformed female tribal guard stood against the booth when not selling $1.00 pull tabs by the entrance. The caller was a blonde female, probably Indian. Two females sold the $20.00 bingo packages from the trailer opposite the tent entrance. A commercial catering truck was parked near the entrance with food and refreshments. Eight portable toilets were near the entrance; 4 large and 2 small for women and 2 small for men.

45. The entire parking lot, including the tent floor is paved. A uniformed security guard was in the parking lot. No armed security guards were observed.

46. The Rincon Roundup bingo game is a high-roller operation. All 10 games of the regular bingo session are $500.00 jackpots. The 3 specials: Rincon Special, Progressive and Lucky 8—U pick 'Em, are $5,000.00 packpots. All the regular games were "gimmick" games of double and triple bingo; letters, kit, stamp and line and etc. No regular/4 corners. The female caller enterspersed the number calling with "buy your extra cards now for the upcoming $100,000.00 bingo game." She also solicited contact people and drivers to bring in out of area players.

47. In addition, two males, one white and one Indian, made announcements on the microphone between games giving the "Bingo-Under-the-Big-Top" a "midway carnival" effect. The small crowd, consisting of 150 to 200 people, was noisy in response to these messages. The $20.00 regular session package consisted of 10 serialized color coded paper sheets of 6 games each. The sheets are confusing to a novice as there is both a number and word free in the center space. The extra card for game 6, the Triple Reno (wild ##) purchased from a runner was unserialized, but like all the game sheets, had a game number. The extra game cards were all $2.00 apiece.

48. The serialized pull tabs in addition to the notation, "For sale or use only in a bingo game authorized under California Law and pursuant to Local Ordinance," had an emblem of the State Bear Flag. The jackpots ranged from $1.00 lemons, $2.00 cherrys, $10.00 plums, $25.00 oranges, $50.00 bells, $100.00 gold bars to $200.00 diamonds. The $1.00 lemon had the word "WIN" overlay in green over the 3 lemon jackpot and another pull tab was given as payoff for the winner. Pull tabs, game cards, and a list of "bus contacts" are here attached as Exhibit "D."

49. The 3rd table had 2 Latin female players. Tables 1 and 2 on the aisle had 8 players who won at least two jackpots. During the evening a "caller" from the Sycuan Bingo Palace was acknowledged as being from the 2nd best bingo game in the county.

50. Persons interested in "making money" were asked to contact the "Hot Corner." In addition, a "for bus service contact person in your area" handout was left for each set of players. These contact people ranged from local residents to residents of Banning, Hemet, Coachella, San Pedro, Fountain Valley, military camps, and Burbank.

51. Most of the games were paced with an electronic beep timer, however, during game 6, it was not used and the pace was raised until the crowd yelled for it to slow down.

52. The great majority of players at the Rincon games were non-Indians. Of 150 to 200 players 87 percent were white, 12 percent were Latin or Indian and 1 percent were black.

QUECHAN INDIAN BINGO

53. On Sunday, March 18, 1984, I attended the QUECHAN BINGO GAME in Winterhaven. The bingo games are held in the QUECHAN Community Center Gym which is located on Picachio Road (S-24) and San Paschal School Road, about one mile outside Winterhaven on the Quechan Indian Reservation. A call to Quechan Indian Bingo, (619) 572-0678, advised the bingo games started at 1345 hours (matinee) and 1845 hours (evening). However, this was in error as the matinee games start at 1300 hours and the "ATC (All Terrain

Cycle) Special Night'' begins at 1830 hours. Warm-up games are played as the crowd settles down. The evening advanced sales with savings on bingo packages ends at 1600 hours.

54. The Quechan Community Center Gym is typical of that of a small rural school. Entrance into the gym is through several double doors into a foyer. On the right side of the foyer is a food concession area and on the left, the restrooms. There are double doors on either side of a glass trophy display case which lead into the gym. The wooden floor is marked off for basketball, the wooden bleachers were folded against the side walls and the backboard nets were raised to the ceiling. Opposite the main entrance is a raised stage. The caller sat alone on the stage; to his left was a gameboard and play diagram board. On each side wall in the center of the gym were game boards, diagram boards and TV monitors. There was also a TV monitor on the stage. The TV camera used by the caller to show the numbers was also used by the runner to verify bingos.

55. Sitting on the stage were household items like clocks, mirrors, ice chests, etc. These prizes, in addition to a 3-wheel ATC were awarded by a name draw. Place cards referred to ''Monster'' matinee and evening jackpots. Also a progressive bingo of 50 numbers for a $1,300.00 jackpot was advertised.

56. An estimated 225-250 players were at the 55 folding tables and chairs. The greater majority of the bingo players were senior citizens—retirees and ''snow birds'' (i.e., persons who travel south to avoid cold northern climates). The vehicles in the lighted gravel

parking lot were mostly Arizona or out of state and the numbers indicated car pooling. An estimated 10 to 15 percent of the players appeared to be Latin or Indian. Only 4 blacks were observed and no Orientals were observed.

57. The Quechan Bingo Game appears to be an all Indian operation consisting of a caller, 4 runners, 3 young boys, and a middle-aged woman. Jackpot payoffs were made by the runners from a woman in an office near the stage; all jackpots over $1,000 are made by check. Three armed uniformed Tribal Police were in and about the gym. An un-uniformed supervisor carrying a radio was also observed. The kitchen sold fast foods and refreshments. Coffee was sold from a cart on the floor.

58. A $16.00 package of serialized all paper games was purchased at the booth located on the left corner of the gym. However, this late purchase package had to be supplemented by additional cards at $1.00 each, which were included in the advanced sales package. The super $.50 Nevada Club pull tabs had instant $1.00 to $100.00 payoffs for 3 cherrys, lemons, oranges, bells and bars. The serialized pull tabs have the notation: "For Sale or Use Only in a Bingo Game authorized under California Law and pursuant to local ordinance." Game cards, pull tabs and literature on the Quechan Tribe are here attached as Exhibit "E."

59. Most of the Jackpots were $100.00. The "LUCKY7" however paid $150.00 and the "KITE," $200.00. The early warm-up mini and the mini-bingo only paid $50.00. The 60-40 double bingo jackpot was $325.00 and the super jackpot full card jackpot was raised from

$500.00 to $600.00. The latebird finale "Super Blackout" full card jackpot was $1,500.00.

60. A woman who became ill during the game was carried to the office area. The caller's announcement that she was fine as the ambulance siren was leaving only brought a slight murmur from the crowd and the games went on.

61. The great majority of players at the Quechan games were non-Indians. Of 225 to 250 players about 83 to 88 percent were white, 10 to 15 percent were Latin or Indian and 2 percent were black.

BINGO BY THE BISHOP INDIAN TRIBE-
Inyo County

62. On March 15, 1984, by telephone, I spoke to Detective Kassemos of the Inyo County Sheriff's Department and he informed me that the Bishop Tribe of Pauite Shoshone Indians were conducting large-stakes bingo just west of the city of Bishop. Detective Kassemos related the tribe was offering $1,000 jackpots in their games conducted on Wednesdays and Fridays. The games have been conducted for about 2 years and they are advertised through the use of radio spots and by billboards on U.S. Highway 395. The tribe's clientele consists of local non-Indian residents and Indian tribal members. The attendance at the games has been increasing. Detective Kassemos stated it was believed the tribe largely conducted the games but may be linked to the Pan-American Amusement Management Company of Tampa, Florida.

SOUTHGATE BINGO PALACE
San Rosa Rancheria, Kings County

63. On March 14, 1984, by telephone, I spoke to Deputy Nick Camarillo of the Kings County Sheriff's Department. He informed me that the Santa Rosa Rancheria has been conducting large-stakes bingo games since September of 1983. The games are run by the Paland Management Company of Dallas, Texas, and the Indians run a food concession serving the bingo games. The games are being conducted at the rancheria which is located 5 miles south of Lemoore.

64. The games are played in a hall seating 1,180 people and the games draw 480 non-Indians and Indians nightly. Admission to the games is $50 and $100 and jackpots are offered from $150 to $47,000. Pull tabs with payoffs from $100 to $1,000 are also offered. Various other merchandise prizes are also awarded. The games are offered from 5 to 7 days a week.

SANTA YNEZ-CHUMASH TRIBAL BINGO
Santa Barbara County

65. On March 29, 1984, by telephone I spoke to Deputy Bill Caldwell of the Special Investigations Unit of the Santa Barbara Sheriff's Department. He informed me that the Chumash Tribe of the Santa Ynez Reservation had been conducting large-stake bingo games since August of 1983. The games are run by the "Associates Management Company" from Santa Ana and the games are played on the reservation which is located 2 miles east of Solvang on Highway 246. The tribe began the bingo games in a tent but have since built a 29,000 square

foot building which houses 1,500 players. The games are offered on Friday, Saturday and Sunday and $1,000 jackpots are offered with a guaranteed $65,000 payoff. Pull tabs are also offered and the tribe gives free bus services from Los Angeles, San Francisco and Sacramento. The games are adversised in San Francisco, Los Angeles, and Bay Area newspapers. Under the management agreement, the tribe receives 51 percent of the profits and the management company receives 49 percent of the profits. The average profits from these games on given days are as follows: Fridays, $15,000; Saturdays, $85,000; Sunday $30,000. It was estimated that the average player spends about $84 per session.

JACKSON BINGO PALACE
Amador County

66. By telephone on March 14, 1984, I spoke to Deputy Greg Berkfeld of the Amador County Sheriff's Office. He informed me that the Mi-Wok Tribe of the Jackson Rancheria had announced intentions to begin large-stakes bingo. The games will be played on the reservation which is located 5 miles northeast of Jackson on New York Ranch Road. The tribe has entered into an agreement with Golden Empire Limited Management Company out of Fresno and have begun building a 20,000 square foot bingo hall. The hall will seat 1,200 players and the tribe intends to offer bingo games 4 days a week, Thursdays through Sundays. The tribe intends to offer $10,000 pots and progressive jackpots of much more. Pull tabs will also be offered.

67. The population on the rancheria consists of 20-25 Indians and the tribe announced its intentions to

provide bus service from Sacramento and the Bay Area to the games.

BINGO by the San Manuel Indian Tribe
San Bernardino County

68. By telephone on March 16, 1984, I spoke to Sergeant Fisher of the San Bernardino Sheriff's Department. He informed me that the Serrano Tribe of the San Manuel Reservation had been negotiating with various management companies to begin large-stakes bingo games on their reservation. He indicated the tribe continues negotiations and intends to begin bingo games.

BINGO GAMES by the Saboba Tribe
Riverside County

69. Through newspaper accounts, I became aware on March 26, 1984, that the Saboba Tribe of Riverside County voted on March 25, 1984, to allow bingo games on their reservation.

Under the penalty of perjury, I hereby declare that the above statements are true and correct.

Executed on June 22, 1984, at San Diego, California.

/s/ Patrick H. Hopper

15. RICHARD TESTIMONY

DEPARTMENT OF JUSTICE

Testimony
by
Mark M. Richard
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
before the
Committee on Interior and Insular Affairs
House of Representatives
Concerning
H.R. 4566

(Indian Gambling Control Act)

June 19, 1984

Mr. Chairman and Members of the Committee:

My name is Mark M. Richard. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

It is a pleasure for me to appear before this Committee to give the Department's position on H.R. 4566, the Indian Gambling Control Act.

This bill, which you have introduced Mr. Chairman, addresses an aspect of Indian affairs and law enforcement concern that has only recently assumed significance. That problem is the widespread development of major gambling operations on Indian reservations scattered throughout the United States. The Department of Interior has estimated that nearly 80 tribes are conducting gambling operations, chiefly bingo, and that 20 to 25 of these are "high stakes" operations, some grossing up to $1 million monthly. Some of these operations are tribally controlled and operated, others involve outside management companies,

while still others are independently operated by individual Indian residents.

The sudden growth of these operations has generated concern in the law enforcement community. The Department has been made aware of the concerns of United States Attorneys, State Attorneys General and District Attorneys and other law enforcement officials. The basis of the concern is the attraction that all lucrative gambling operations will have for organized criminal elements. The large amounts of cash act as a magnet and a source of potential corruption. Let me mention also that our concerns at this time are oriented toward prevention of future problems and are based on our past experience going back several decades in dealing with organized crime.

Many states are now permitting gambling. Where stakes are high, the states have generally kept the operations in their own hands or subjected them to the control of powerful gaming commissions; where private parties (such as local charities) are allowed to operate gambling, there is generally strict licensing coupled with severe limitations on times of operations and prizes. In either case, state control hopefully fends off criminal influence by direct government operation or by minimizing the amount of cash in play. In the area of Indian gambling neither state nor federal law enforcement operates as an effective deterrent because of the complex network of reservation criminal law enforcement.

The attraction that high stakes gambling has for criminal elements should be readily apparent to this Committee. It involves a large number of fast moving cash transactions. The opportunities for "skimming" and "laundering" are enormous. Employees and managers can be corrupted into dishonest manipulations. Large-

scale gambling operations require significant support services, such as security, food, cleaning, sanitation and transportation. Every one of these fringe operations can be lucrative and can attract racketeers who preserve their competitive edge by violence and intimidation. This has been the experience of legal gambling elsewhere. It has necessiated the creation of boards and commissions with pervasive supervisory authority, and even that has not always proved effective. If Congress is going to put its stamp of approval on gambling activities, it should safeguard against crime and corruption.

From the point of view of criminal law jurisdiction there are two major types of reservation: Those in which jurisdiction over Indian residents is shared between the federal and tribal governments, and those where all or some jurisdiction is exercised by the state. CF 18 U.S.C. 1151 with 18 U.S.C. 1162 and 18 U.S.C. 3242. On the federal reservations, as on other federal enclaves, state law is often assimilated to fill the gaps in legislation. See 18 U.S.C. 13 and 1152. It has been held in non-gambling situations that on either type of reservation, only state *criminal* law was directly enforceable by the state or assimilated by federal law, and that certain "regulatory" measures of the state though enforceable by criminal penalties, did not qualify as "criminal."

Within the very recent past, some Indian tribes have begun to use this exemption to carry on large-scale gambling operations free of all the licensing requirements and limitations and restrictions imposed generally by state law. The courts have uniformly supported the tribes except in those instances where the tribes engaged in operations that were completely forbidden by state law, and the prohibition was therefore deemed "criminal." Thus, blackjack

will not be legal on a reservation if the only form of gambling allowed in the state is bingo. If legal bingo is allowed only upon a permit issued by the police chief to members of a church or charitable organization, and only for three-hour sessions to be held once a month with a $100 prize limit, the Indians may, in contrast, conduct operations 24 hours a day, daily, with $10,000 prizes and no permit. For example, the Cabazon Band in California, consisting of 25 members, has a hall that seats 700, open 7 nights a week. The Cherokee in North Carolina have had over 3000 players paying $108 a head at their twice a month sessions. The Lac Court Oreilles in Wisconsin charge a $200 entry fee for a chance at jackpots totaling $75,000 each night. The Pawnee of Oklahoma outgrew their 200-seat gym and have built an 800-seat establishment.

This bill, which you have introduced Mr. Chairman, would establish federal standards and regulations for gambling in Indian country. The Department endorses appropriately crafted standards and regulations for gambling activity. Although the Department has reservations about H.R. 4566, the bill suggests a framework for shielding such operations from infiltration by criminal elements, the danger that has caused the Department concern. The proposal also represents an attempt to achieve a compromise between Indian and local interests. It preserves some substantial measure of tribal authority, and recognizes that totally unregulated gambling raises legitimate law enforcement concerns to both the Indians and to persons living in areas surrounding reservations. Finally, the proposal will safeguard a significant source of tribal revenue. By stating a clear congressional policy in accord with those decisions legalizing high stakes gambling, the bill will serve to protect the tribes from the risk of adverse

decisions in other courts of appeals or in the Supreme Court *Cf. Rice v. Rehner*, — U.S. — , 103 S. Ct. 3291 (1983) with e.g., *Barons Group of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, — U.S. —, 103 S. Ct. 2091 (1983).

We cannot fully endorse the bill as drafted. From a law enforcement perspective it does not go far enough. Our concerns are that the bill simply does not provide for the degree of supervision and auditing to safeguard against "skimming," and "laundering," kickbacks, manipulation and other criminal activity. Although the tribes are recognized as governments, they do not have the authority or resources to police these types of activities. The 25-member Cabazon Band or the 106 member Sioux tribe at Prior Lake, near Minneapolis, cannot adequately deal with the influx of hundreds of players. Even larger tribes that could be said to be analogous to counties, do not have access to subpoena power or state criminal records that are just two of the many prerequisites to effective screening and auditing of a gambling operation. Indian courts do not have jurisdiction over non-Indians who commit offenses on reservations. Altercations, robberies, driving offenses and disorderly conduct will cause problems for local and federal authorities that they are not prepared to deal with.

It is the view of the Department of Justice that there are many problems related to having the Department of the Interior play the role of a supervisory gambling commission. To be reasonably effective as a detergent to the infiltration of corrupt and criminal influences, a regulatory body functioning in the field of gambling must be well staffed with sophisticated auditors and investigators, have readily available compulsory process, be based on or near

the center of the operations and have the power to establish and enforce regulations covering the entire gamut of matters associated with running a gambling operation. Even then, as we have repeatedly seen with respect to well regulated state operations, criminal infiltration still rears its ugly head. The Interior Department is in no position to assume the needed regulatory role, which in many respects would be inconsistent with its mission and function. An alternative mechanism for regulating gambling on Indian reservations must be devised.

While the Department has yet been unable to come up with a satisfactory alternate mechanism for dealing with Indian gambling, we hope, in conjunction with the Department of Interior, to do so in the near future. Beyond developing a satisfactory proposal on that regulatory mechanism, we would like to express some of our concerns with other provisions of H.R. 4566. I will deal with them in the order that they appear in the bill:

Definition of Indian country.

Section 4(3) defines "Indian country" as (a) reservations and (b) lands held by the United States in trust for a tribe or individual or land held by a tribe or individual with a restriction on alienation. This differs significantly from the standard and general definition in 18 U.S.C. § 1151 by omitting "dependent Indian communities". We surmize that the intent of the draftsman was to preclude legalization of gaming in those areas which, while sufficiently Indian in character to warrant federal criminal jurisdiction to the exclusion of the state, were not under tribal governance. We think this a correct decision. However, we are not certain why the same reasoning should not apply to the other buildings and lands in trust or under restriction, that are not within reservation boundaries,

i.e., not in areas in which Indians reside under tribal governance.

Secondly, we fear that the discrepancy in definitions conceals a law enforcement gap, in that it does not specifically and clearly deal with gaming in the "dependent Indian communities" which are subject to exclusive federal criminal jurisdiction, but where there is no federal or assimilable state law making gaming a criminal offense because the state law is deemed merely regulatory.

Thirdly, since the Act apparently is intended to be all-inclusive, reaching not only federally controlled reservations but those in which criminal jurisdiction has been ceded to the States as well (see Section 5), it might be advisable to deal explicitly with those reservations (or areas consisting of allotments held in trust or under restriction on alienation) which were either state created or over which more jurisdiction was ceded to the state than was done under Pub. L. 280 and similar legislation. Examples would be some reservations in eastern states and allotments in the former Indian Territory which has become part of Oklahoma. While such specific tratment may not be necessary — since *Penobscot Nation v. Stilphen*, — U.S. — , 104 S. Ct. 323, 52 USLW 3330 (No. 83-336, Oct. 31, 1983), a recent Supreme Court decision, rejecting jurisdiction of a Maine Indian suit to restrain state enforcement of its gambling regulations for want of a substantial federal question, suggests that in such cases state regulatory law is applicable — the will of Congress might best be spelled out rather than left to litigation.

Illegal gaming.

The proposal provides for punishment of unauthorized gaming by tribal as well as federal and state authority. Whether it is intended that tribal authority extend to non-Indian violators should be made clear rather than left to litigation. In *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191 (1978), the Supreme Court held that in the absence of a declaration there was no jurisdiction, but section 5 is ambiguous.

We assume it is intended that entities such as an American Legion Post or Catholic Church obtain a permit even if most members are non-Indian. It might, however, be advisable to clarify to what extent the non-Indian residents of the reservation require tribal licensing to avoid litigation of the type in *United States v. Mazurie,* 419 U.S. 544 (1975).

It should also be made clear whether and to what extent tribal prosecution will bar subsequent federal or state prosecution for the same conduct. Cf. 18 U.S.C. § 1152, para. 2, cl. 2 (precluding successive prosecution), with *Wheeler v. United States,* 435 U.S. 313 (1978) (holding that successive prosecution is not barred by the Double Jeopardy Clause).

The provision for prosecution of illegal gaming by the states in those instances where jurisdiction has been assumed under special statutes is inadequate becaue it cites only two such Acts, Pub. L. 90-284 and Pub. L. 83-280. There are others, e.g. Pub. L. 80-846 (Iowa), and 18 U.S.C. 3243 (Kansas).

Additionally and most significantly, is the failure of this key provision to provide punishment for gambling that it declares "illegal."

We have a number of other concerns in addition to these mentioned. For example, with respect to management contacts, it is not clear whether the only ground on which a contract may be disapproved is the presence of a convicted felon. Section 7(c). If this is the case, it is inadequate. A very substantial concern of the Department of Justice is the presence of front persons without felony convictions but linkage with organized crime. On the other hand, if it is contemplated that there are other bases on which the contract can be disapproved, they should be outlined or indicated in some fashion.

We are not certain that section 7(a) (ii) requires sufficient information for an adequate background check.

In conclusion, let me say that the Department views this bill as a very important beginning. The Departments of Justice and Interior have been working independently and with one another over a year to come up with a workable solution that should be generally agreeable to all concerned. Both Departments are in general agreement with the objectives of this bill, but both have their reservations and concerns which have not been allayed. I hope that I have conveyed to this Committee a sense of our deep concern lest this well-intended piece of legislation be enacted without necessary safeguards.

16. BEAN DECLARATION

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Attorneys for Plaintiff

THE CABAZON BAND OF MISSION INDIANS
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-83-1117-LEW(Tx)

THE CABAZON BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

CASE NO. CV-83-3073-LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, et al.,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

DECLARATION OF
LOWELL JOHN BEAN
Date: September 24, 1984
Time: 9:00 a.m.
Courtroom: 4

I, LOWELL JOHN BEAN, declare under penalty of perjury as follows:

1. I am a Professor of Anthropology at California State University at Hayward and am competent to make this declaration. If called to testify, I would testify as follows:

2. I earned my A.B., M.A., and Ph.D degrees in authropology from the University of California at Los Angeles.

3. I have worked among California Indians for over twenty-five (25) years.

4. My primary area of research is southern California Indians. I have worked extensively among the Cahuilla, the Serrano, the Chemehevi. the Diegueno, and the Luiseno Indians of southern California. The residents of Morongo Indian Reservation and Cabazon Indian Reservations are

descendants of these cultures. Of these groups, it is the Cahuilla Indians whose culture I have addressed my most intense research attention. I began my research in 1958 among the Cahuilla and resided for a lengthy time at the Morongo Indian Reservation in southern California. Of all the Indian reservations at which I have conducted ethnographic and enthnohistoric research in areas such as economics, politics, religion, organization, Morongo Indian Reservation has received more research attention from myself than any others. I have published a number of books and articles on the Cahuilla and some specifically on the Morongo Indian Reservation and its history of economic development.

I am also a charter trustee and member of the Board of Trustees of Malki Museum at the Morongo Indian Reservation, associate editor of the California Journal of Anthropology, and editor-in-chief of the Ballena Press. A copy of my curriculum vita is attached.

5. I have examined the declaration and report by William Wallace filed by the defendants in this case and conclude that the declaration and report do not adequately describe the nature and role of gambling among the Cahuilla Indians and, in particular, the Morongo, Cabazon, and other reservations with which I am familiar. Based on my many years of research and personal knowledge of the Cahuilla culture, I have prepared a brief overview of Cahuilla gambling and analysis of Dr. Wallace's report and declaration which is attached hereto.

6. Cahuilla Indians of these reservations have engaged in gambling for both public and private benefit, provided time and space under the direction and control

of tribal leaders for gambling purposes, and have encouraged Indians of other tribes and, in historic times, persons of other cultures and races (including Spanish, Mexican, and Anglo-American persons) to participate in gambling endeavors on their reservations.

7. I find it necessary to say that since Dr. Wallace has not intensively researched the Cahuilla peoples, traditionally or historically, nor the social, economic, religious circumstances of the Morongo and Cabazon Reservations, he cannot be considered an expert in this matter.

8. As an anthropologist, I see the presence of the Tribal Bingo enterprises on the Morongo and Cabazon Reservations as being a present day adaptation of the traditional ways of the Cahuilla people, *e.g.* the use of tribal lands for gaming, recreation, and generating an income from gambling and spending by outsiders for the economic benefit of the reservation.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on July 21, 1984 at Oakland, California.

/s/ Lowell John Bean

A BRIEF OVERVIEW OF CAHUILLA GAMBLING AND AN ANALYSIS OF THE DECLARATION AND REPORT OF WILLIAM J. WALLACE FOR THE COUNTY OF RIVERSIDE AND THE STATE OF CALIFORNIA IN CASES NO. CV 83-3073-LEW AND 83-1117-LEW

I have read the manuscript prepared by my colleague, Dr. William Wallace, entitled "California Indian Gam-

bling''. Dr. Wallace has reviewed some, but by no means all, of the literature contained in ethnographic sources on California Indians. The materials reviewed by Dr. Wallace are inadequate for a thorough understanding of California Indians in general and for the understanding of the nature of gambling among the Cahuilla Indians of southern California at Morongo Indian Reservation and Cabazon Indian Reservation in particular. The California Indian cultures, which include more than 80 separate reservations and rancherias, are widely diverse and not easily subject to such broad generalizations as developed in Wallace's paper. It is clear that Dr. Wallace has not utilized what literature is available regarding these communities. He has not consulted with other experts in the field in order to evaluate the nature of gambling in the subject area. Nor has he, to my personal knowledge, ever engaged in ethnographic field work among these peoples. The data base which he has reviewed is not adequate for making sweeping generalizations about California Indians, especially not the Indians of the Morongo and Cabazon Indian Reservations.

The essay is also inadequate because Dr. Wallace does not consider the nature of gambling as an institution after the time of European contact. Traditional gambling techniques have continued among these peoples from time immemorial until the present. Gambling has at no time in the history of the Cahuilla peoples ceased as a significant activity, including today.

I will proceed to comment on specific points in this essay.

On page 1, paragraph 3, Dr. Wallace notes, ''However, such persons did not form a professional class of gamblers,

for no one gained a full living from the habit." Those Indians of southern California and the Cahuilla Indians in particular whom I have interviewed over my many years of working among the Cahuilla, consider gamblers among their people to be a professional class as persons. These gamblers made a significant part of their living both traditionally and historically because of their skills in gaming. They received an extraordinary amount of money for these activities and, in fact, refused—and still refuse—to engage in gambling without wagers of significant amounts of moneys. For example, I myself am familiar with an instance in the late 1950's or early 1960's in which highly regarded gamblers refused to participate in a game until the amount being wagered was $3,000. I was advised at the time that this was not atypical. Individuals who are in these categories are ranked according to their skills; their reputations are well known; their skills are well known; they are highly thought of and respected in their communities because of their skills. Furthermore, gambling and gamblers receive political and supernatural, or sacred, sanctions from community leaders for these activities. The time and places where gambling was engaged were controlled, sanctified, and protected by traditional leaders of Indian communities, whether at "nukil" or funeral ceremonies, or in later times at fiestas.

It is well known that persons of high rank and status among California Indians served in professional capacities. Among the Cahuilla, the "Net" (Chief) the "Paha" (Chief's assistant), ceremonial singers, shaman-curers, basket makers, traders and others were considered as professional persons. This condition is not at all unique to the Cahuilla. It is found throughout the State of California and

Native Americans in all of the areas in which I have worked, which includes some dozen or so tribes throughout California. Gamblers are generally considered as professional persons as would be political/religious elites or craftsmen.

Wagers were placed and won or lost by individuals, competing team-players and non-players. Wallace says on Page 5, "The village or tribe as such never put a common bet, even if the opponents were outsiders. Nor did the political community or any political authority receive any part of the amount raised. Aside from the small percentage paid to a referee or umpire, the entire sum wagered went to the successful bettor or bettors."

Comment: There is no supporting data for this conclusion. To the contrary, at fiestas among the Cahuilla, exchanges of goods or payments were associated with game playing. When gaming participants would come to Cahuilla ceremonies or fiestas at which they engaged in gambling, a mandatory gift or payment would be given to the political-religious leaders (of the community). During religious and secular fiestas, these same people would be expected to provide gifts, and they would rent space and accomodations from the fiesta coordinators, who were the political and community leaders of these communities. They would also distribute monies throughout the community through purchases of goods while visiting the communities. Consequently, at both sacred ceremonies and fiestas, the sponsoring community did indeed receive monies and/or goods for services provided to visitors or participants who came to gamble, wager or observe gaming. This is particularly evident in the Spanish, Mexican, and early American periods when gambling was done under the sponsorship of fiesta leaders.

Each reservation in southern California had a Saint's Day and a fiesta was generally held every year at that Saint's Day. These fiestas usually lasted about a week. The purpose of these fiestas was commercial, economic, recreational, religious, and social. People were charged for the space they used. People sold things at rented spaces. They sold food materials and crafts. It was expected that the overhead cost of the fiesta would be taken care of by donation and rents and that a profit would be received by the sponsors as well as various other entrepreneurs coming for commercial purposes. Gamblers were among these. After Indians began to deal socially and economically with non-Indians throughout the Spanish, Mexican, and American periods, non-Indians were encouraged to come to these fiestas as participants and customers. Gambling games were played with Indians and non-Indians participating. These included not only the traditional games, but games such as card and dice games and horse races.

The playing of these games is still considered an inherent component to the fiesta system. A fiesta without gambling is not a fiesta.

On page 20, Wallace suggests, "Very few aboriginal games are still played." While it is true that many aboriginal games are not played today, those most associated with gambling and exchange of large amounts of monies between individuals or groups are still played on almost every reservation and Indian community that I know of in California. In particular, these include hand games and peon games. Although many traditional games are not still played, many California Indians, and Cahuillas in particular, that I know from personal experience, engage in non-Indian gambling very frequently. It is a significant recreational function

among Cahuillas. Several Cahuillas that I know have been engaged in a professional capacity at card parlors and the like in the local region.

It should be pointed out that, contrary to the conclusions of William Wallace on page 21 of his report, gambling traditionally and historically has been engaged in as part of tribally-run enterprises. Ceremonies and fiestas were to attract Indian and non-Indian players from many other reservations and communities surrounding the reservations as a means of bringing income to a tribally-sponsored affair. For this purpose, special gaming spaces were provided or built by the sponsoring group, e.g., ramadas. The fiesta, at which gaming was a very significant economic component, was seen as a means of acquiring revenue for the reservation and a part of this was an attempt to attract outsiders, often non-Indians. Wallace's statement that "Undertakings of this sort find no precedent in native California Indian life and culture" is not historically accurate.

Finally, it is necessary to say that, since Dr. Wallace has not intensively researched the Cahuilla peoples, traditionally or historically, nor the social, economic, religious circumstances of the Morongo and Cabazon Reservations, he cannot be considered an expert in this matter. In order to be considered an expert in this field, one would have to demonstrate a familiarity with the literature on the Morongo and Cabazon reservations and the Cahuilla Indians, have worked directly with these Indians, and have reviewed the archival data available on this subject. From the report and declaration which he submitted in this case, it is clear to me that Wallace has not done any of these things which would qualify him professionally to render an expert opin-

ion on this subject as an anthropologist. In addition, Wallace is considered by his peers to be an archaeologist, not an ethnographer or cultural anthropologist.

LOWELL JOHN BEAN
Oakland, California

17. APPROVAL OF MANAGEMENT AGREEMENT

(SEAL)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau Of Indian Affairs
Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825

CERTIFICATE OF APPROVAL

Pursuant to the Act of March 3, 1891, as amended (16 Stat. 570; 25 U.S.C. 81), and the authority redelegated from the Secretary of the Interior by 209 DM 8 and 10 BIAM 3.1, that Management Agreement dated May 17, 1984 and the Amendment No. 1 thereto dated September 10, 1984, between the MORONGO BAND OF MISSION INDIANS and CBA DEVELOPMENT COMPANY, INC., a California corporation, for the purpose of the establishment and operation of a tribal bingo enterprise on the Morongo Indian Reservation, Riverside County, California, is hereby approved retroactive to May 17, 1984 SUBJECT TO the following condition:

1. This approval by the Secretary of the Interior may be revoked if any parties in interest to CBA shall be found to have a felony conviction or plea of nolo contendere.

ACCEPTANCE of the above condition by the Morongo Band and CBA shall be evidenced by their signatures attached hereto and unless a fully signed copy of this conditional approval is returned to the undersigned Area Director within thirty (30) days of the below date, the within approval shall be deemed null and void.

Date: 9-20-84

/s/ Illegible
Area Director

ACCEPTED:

CBA DEVELOPMENT COMPANY, INC.

/s/ By Illegible

Date: 9-25-84

MORONGO BAND OF MISSION INDIANS

/s/ Robert Martin,
Tribal Chairman

Date: 9/24/84

/s/ Mary Ann Andrea
Business Committee
Member

/s/ Victoria Morris
Business Committee
Member

/s/ Hue F. Verb
Member
Business Committee

Business Committee
Member

/s/ Charles Martin
Business Committee
Member

/s/ Rodney Mattrice
Business Committee
Member

18. KRENZKE DECLARATION

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-83-1117-LEW(Tx)

THE CABAZON BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE CALIFORNIA, and BEN CLARK,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervener.

CASE NO. CV-83-3073 (LEW)

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, et al.,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

DECLARATION OF THEODORE KRENZKE, DIRECTOR OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR, IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, THEODORE KRENZKE, do hereby declare:

1. I am Director of Indian Services, in the Burea of Indian Affairs, United States Department of the Interior. As such, I am familiar with the policies of the Department of the Interior regarding Indian tribal bingo enterprises.

2. It is the Department's position that tribal bingo enterprises are an appropriate means by which tribes can further their economic self-sufficiency, the economic development of their reservations, and tribal self-determination. All of these are federal goals for tribes. Furthermore, it is the Department's position that the development of tribal bingo enterprises is consistent with and in furtherance of President Reagan's Indian Policy Statement of January 24, 1983. A copy of the President's statement is attached as *Exhibit 1*.

3. We regard the opportunity to establish bingo enterprises as particularly important for tribes which lack revenue-producing natural resources on their reservations and which lack a viable tax base. We recognize that the limitations on federal funding for tribal governments has been the impetus for many tribes to seek alternative sources of the revenue they need in order to provide governmental services to their people. A number of tribes have turned to bingo enterprises to supply that revenue just as many states have instituted state-run lotteries for the same purposes.

4. As the Department charged with the primary responsibility for carrying out the nation's trust obligations toward Indian tribes, we are responsible for protecting tribal resources. We are also concerned with the overall welfare of the tribes and their members. In furtherance of the federal responsibility in this regard, the Deputy Assistant Secretary—Indian Affairs (Operations) has recently issued instructions to the Area Directors of the Bureau of Indian Affairs regarding review and approval of bingo management contracts. A copy of these instructions is attached hereto as *Exhibit 2.*

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.

Executed at Wishington, D.C., on August 28, 1984.

/s/ THEODORE KRENZKE

EXHIBIT 1

* * *

Indian Policy

Statement by the President.
January 24, 1983

This administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to State and local governments but also to federally recognized American Indian tribes.

When European colonial powers began to explore and colonize this land, they entered into treaties with sovereign

Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-governmet basis. Throughout our history, despite periods of conflict and shifting natural policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this administration pledges to uphold.

In 1970 President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the Federal Government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

The principle of self-government set forth in this act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, Federal policies have by large (Illegible) the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

This administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economies. Tribal governments, the Federal Government, and the private sector will all have a role. This administration will take a flexible approach

which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the Federal Goverment.

This administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen Federal control over tribal governmental affairs. This administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.

In support of our policy, we shall continue to fulfill the Federal trust responsibility for the physical and financial resources we hold in trust for the tribes and there members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

Tribal Self-Government

Tribal governments, like State and local governments are more aware of the needs and desires of their citizens than is the Federal Government and should, therefore, have the primary responsibility for meeting those needs. The only effective way for Indian reservations to develop is through tribal governments which are responsive and accountable to their members.

Early in this nation's dealings with Indian tribes, Federal employees began to perform Indian tribal government functions. Despite the Indian Self-Determination Act, major tribal government functions—enforcing tribal

laws, developing and managing tribal resources, providing health and social services, educating children—are frequently still carried on by Federal employees. The Federal Government must move away from this surrogate role which undermines the concept of self-government.

It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This administration pledges to assist tribes in strengthening their governments by removing the Federal impediments to tribal self-government and tribal resource development. Necessary Federal funds will continue to be available. This administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs.

For those small tribes which have the greatest need to develop core governmental capacities, this administration has developed, through the Assistant Secretary of the Interior for Indian Affairs, the Small Tribes Initiative. This program will provide financial support necessary to allow these tribes to develop basic tribal administrative and management capabilities.

In keeping with the government-to-government relationship, Indian tribes are defined by law as eligible entities and receive direct funding, if they wish, in five block grant programs administered by the Department of Health and Human Services. These and other blocks to the States consolidated dozens of categorical Federal domestic assistance programs to reduce fragmentation and overlap, elimi-

nate excessive Federal regulation, and provide for more local control. This administration now proposes that Indian tribes be eligible for direct funding in the Title XX social services block, the block with the largest appropriation and the greatest flexibility in service delivery.

In addition, we are moving the White House liaison for federally recognized trfibes from the Office of Public Liaison to the Office of Intergovernmental Affairs, which maintains liaison with State and local governments. In the past several administrations, tribes have been placed along with vital interest groups, such as veterans, businessmen, and religious leaders. In moving the tribal government contact within the White House Intergovernmental Affairs staff, this administration is underscoring its commitment to recognizing tribal governments on a government-to-government basis.

Further, we are recommending that the Congress expand the authorized membership of the Advisory Commission on Intergovernmental Relations (42 U.S.C. 4273) to include a representative of Indian tribal governments. In the interim, before congressional action, we are requesting that the Assistant Secretary for Indian Affairs join the Commission as an observer. We also supported and signed into law the Indian Tribal Governmental Tax Status Act which provides tribal governments with essentially the same treatment under Federal tax laws as applies to other governments with regard to revenue raising and saving mechanisms.

In addition, this administration calls upon Congress to replace House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now discredited

policy of terminating the Federal-tribal relationship Congress has implicitly rejected the termination policy by enacting the Indian Self-Determination and Education Assistance Act of 1975. However, because the termination policy declared in 11 Con Res 108 has not been expressly and formally repudiated by a concurrent resolution of Congress, it continues to create among the Indian people an apprehension that the United States may not in the future honor the unique relationship between the Indian people and the Federal Government. A lingering threat of termination has no place in this administration's policy of self-government for Indian tribes, and I ask Congress to again express its support of self-government.

These actions are but the first steps in restoring control to tribal governments. Much more needs to be done. Without sound reservation economies, the concept of self-government has little meaning. In the past despite good intentions, the Federal Government has been one of the major obstacles to economic progress. This administration intends to remove the impediments to economic development and to encourage cooperative efforts among the tribes, the Federal Government, and the private sector in developing reservation economies.

Development of Reservation Economies

The economies of American Indian reservations are extremely depressed, with unemployment rates among the highest in the country. Indian leaders have told this administration that the development of reservation economies is their number one priority. Growing economies provide jobs, promote self-sufficiency, and provide revenue for essential services. Past attempts to stimulate growth

have been fragmented and largely ineffective. As a result, involvement of private industry has been limited with only infrequent success. Developing reservation economies offers a special challenge devising investment procedures consistent with the trust status, removing legal barriers which restrict the type of contracts tribes can enter into, and reducing the numerous and complex regulations which hinder economic growth.

Tribes have had limited opportunities to invest in their own economies, because often there has been no established resource base for community investment and development. Many reservations lack a developed physical intrastructure, including utilities, transportation, and other public services. They also often lack the regulatory, adjudicatory, and enforcement mechanisms necessary to interact with the private sector for reservation economic development. Development on the reservation offers potential for tribes and individual entrepreneurs in manufacturing, agribusiness, and modern technology, as well as fishing, livestock, arts and crafts, and other traditional livelihoods.

Natural resources such as timber, fishing, and energy provide an avenue of development for many tribes. Tribal governments have the responsibility to determine the extent and the methods of developing the tribe's natural resources. The Federal Government's responsibility should not be used to hinder tribes from taking advantage of economic development opportunities.

With regard to energy resources, both the Indian tribes and the Nation stand to gain from the prudent development and management of the vast coal, oil, gas, uran-

ium, and other resources found on Indian lands. As already demonstrated by a number of tribes, these resources can become the foundation for economic development on many reservations while lessening our nation's dependence on imported oil. The Federal role is to encourage the production of energy resources in ways consistent with Indian values and priorities. To that end, we have strongly supported the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

It is the free market which will supply the bulk of the capital investments required to develop tribal energy and other resources. A fundamental prerequisite to economic development is capital formation. The establishment of a financial structure that is a part of the Indian reservation community is essential to the development of Indian capital formation.

Federal support will be made available to tribes to assist them in developing the necessary management capability and in attracting private capital. As a first step in that direction, we provided funds in the FY 1983 budget to provide seed money to tribes to attract private funding for economic development ventures on reservations. As more tribes develop their capital resource base and increase their managerial expertise, they will have an opportunity to realize the maximum return on their investments and will be able to share an increasing portion of the business risk.

It is the policy of this administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. In some cases, tribes and the pri-

vate sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.

Since tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed. This administration, therefore, is establishing a Presidential Advisory Commission on Indian Reservation Economies. The Commission, composed of tribal and private sector leaders, is to identify obstacles to economic growth in the public and private sector at all levels; examine and recommend changes in Federal law, regulations, and procedures to remove such obstacles; identify actions State, local, and tribal governments could take to rectify identified problems and recommend ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies. It is also to be charged with the responsibility for advising the President on recommended actions required to create a positive environment for the development and growth of reservation economies.

Numerous Federal agencies can offer specialized assistance and expertise to the tribes not only in economic development, but also in housing, health, education, job training, and other areas which are an integral part of reservation economies. It is to the advantage of the tribes, and in the interest of the taxpayers, that the Federal role be fully reviewed and coordinated. Therefore, this administration directs the Cabinet Council on Human Resources to act as a mechanism to ensure that Federal activities are nonduplicative, cost-effective, and consistent with the goal of encouraging self-government with a minimum of Federal interference.

Summary

This administration intends to restore tribal governments to their rightful place among the governments of this nation and to enable tribal governments, along with State and local governments, to resume control over their own affairs.

This administration has sought suggestions from Indian leaders in forming the policies which we have announced. We intend to continue this dialog with the tribes as these policies are implemented.

The governmental and economic reforms proposed for the benefit of Indian tribes and their members cannot be achieved in a vacuum.

This nation's economic health—and that of the tribes—depends on adopting this administration's full economic recovery program. This program calls for eliminating excessive Federal spending and taxes, removing burdensome regulations, and establishing a sound monetary policy. A full economic recovery will unleash the potential strength of the private sector and ensure a vigorous economic change for development which will benefit not only Indian people but all other Americans as well.

REAGAN ADMINISTRATION INDIAN POLICY INITIATIVES

—Request that Congress repudiate House Concurrent Resolution 108 of the 83d Congress, which called for termination of the Federal tribal relationship. The administration wants this lingering threat of termination replaced by a resolution expressing its support of a government-to-government relationship.

—Ask Congress to expand the authorized membership of the Advisory Commission on Intergovernment Relations to include a representative of Indian tribal governments. In the interim, request that the Assistant Secretary of the Interior for Indian Affairs join the ACIR as an observer.

—Move the White House liaison for federally recognized tribes from the Office of Public Liason to the Office of Intergovernmental Affairs.

—Establish a Presidential Advisory Commission on Indian Reservation Economies to identify obstacles to economic growth and recommend changes at all levels, recommend ways to encourage private sector involvement, and advise the President what actions are needed to create a positive environment for the development and growth of reservation economies.

—Support direct funding to Indian tribes under the Title XX social services block grant to States.

—Sought and obtained funds for FY 1983 to implement the Small Tribes Initiative to provide financial support needed to allow small tribes to develop basic tribal administrative and management capabilities.

—Sought and obtained funds for FY 1983 to provide seed money for tribes for economic development ventures on reservations.

—Supported and signed into law the Tribal Governmental Tax Status Act which will provide tribal governments with the same revenue raising and saving mechanisms available to other governments.

—Support the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

—Direct the Cabinet Council on Human Resources to act as a review and coordination mechanism to ensure that Federal activities are non-duplicative, cost-effective, and consistent with the goal of encouraging tribal self-government with a minimum of Federal interference.

* * *

EXHIBIT 2

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

July 20, 1984

IN REPLY REFER TO:

Tribal Government Services (JS)

Memorandum

To: All Area Directors

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Review of Tribal Bingo Management Contracts

Two federal courts have recently held that 25 U.S.C. § 81 renders tribal bingo management contracts invalid unless they are approved pursuant to that section.[1] While it is my view and the view of the Solicitor's Office that these decisions are erroneous, it is likely that tribes now operating under unapproved management contracts will, understandably, become concerned about the effect of those decisions and begin to request approval of their contracts. As you know, there are no regulations governing review of such contracts. Given our uncertain authority under present law to promulgate regulations of this nature, and the time it would take to do so, I do not intend to issue regulations at this time. Nevertheless, I believe that we must offer some assistance to tribes which are concerned

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1. *Wisconsin Winnebago Business Committee v. Koberstein*, No. 83-C-1014-S, W. D. Wis., April 2, 1984; *Flandreau Indian Management Company v. Flandreau Santee Sioux Tribe*, Civ. No. 84-4055, D. S. Dak., April 11, 1984.

about the legal status of their management contracts. Therefore, in cases where tribes request approval of their management contracts, we should undertake to review them. Our role, pending clarification of the law,[2] should be one of assisting concerned tribes to overcome the legal uncertainties caused by the federal court decisions.

Until further notice, the following instructions should be observed in reviewing tribal bingo management contracts. If you have recommendations for revisions in these instructions, please send them to the Deputy Director, Office of Indian Services. Amended instructions will be issued as necessary.

1. Authority to approve or disapprove tribal contracts may not be delegated to the Superintendents. 10 BIAM 3.5A. Accordingly, tribal bingo management contracts may be acted on only at the Area level or above. However, the Superintendents should participate in the review process and offer their recommendations to the Area Directors.

2. No contract should be reviewed unless submitted for review by a resolution of the governing body of the tribe. The resolution must set forth the authority of the tribal officials who have signed the contract on behalf of the tribe and identify the provision of the tribal constitution which authorizes it. The resolution should be attached to and made a part of the contract.

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2. We intend to seek legislative clarification of 25 U.S.C. § 81. This, however, will take some time to accomplish. H. R. 4566, the "Indian Gambling Control Act," if enacted in its present form, would clearly authorize and require the Department to review management contracts. However, that bill is not expected to be acted on in this Congress.

3. The contract must set forth (1) the time and place where it was made, (2) the purpose for which it was made, and (3) the thing or things to be done under it.

4. The contract must have a fixed limited time to run, which must be distinctly stated. The contract term should not exceed five years unless there is provision for renegotiation of the management fee or other adjustment of the fee to accommodate changes in circumstances. For contracts of longer than five years duration, the opportunity for renegotiation or other provision for adjustment should arise no later than five years after the contract is entered and thereafter at intervals of no longer than five years.

5. The contract must include the amount or rate per centum of the contractor's fee. It should also specify the method of computing the fee and set out the accounting procedures to be used.

6. The contract must specifically set forth any contingent matter or condition which constitutes a part of the contract. The contract should state that it represents the entire agreement of the parties.

7. The contract must include or have attached a list of all parties in interest to the contract including, on behalf of the contractor, all investors, including general and limited partners, all coroporate officers and directors, and all employees who will have day-to-day management responsibility for the gambling operation. The list must include the residence addresses, occupations and social security numbers of all such persons. If the contractor is a corporation, its articles

of incorporation and the corporate resolution authorizing the contract should also be attached.

8. The contract should specifically state whether assignments or subcontracts[3] will be permitted. If they are permitted, the contract should provide that no assignment or subcontract is valid until approved by the Secretary (*i.e.*, Area Director). Assignments or subcontracts submitted for approval should include or have attached a list of all parties in interest as defined in paragraph 7 above, including residence addresses, occupations and social security numbers.

9. Before any contract is approved, the names of persons submitted pursuant to paragraphs 7 and 8 should be transmitted to the FBI for name and record checks. All such names and results of the FBI checks should be sent to the Chief, Division of Law Enforcement Services, who will maintain a control file of this information. No contract, assignment, or subcontract should be approved where the FBI report shows a felony conviction or plea of nolo contendere for any such person. If the FBI report shows an indictment for any such person, the tribe should be so advised.

10. The contract should require the contractor to furnish the tribe, on at least a monthly basis, statements showing revenues and expenses of the gambling operation.

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3. "Subcontract" is defined as any contractual arrangement between the contractor and a third party wherein the third party will have any responsibility for the gambling operation or access to the proceeds of the operation.

11. The contract should provide that the tribe will receive its portion of the proceeds of the gambling operation on at least a monthly basis. The contract should specify the tribal official or bank account to whom the tribe's portion of the proceeds should be paid and such provision should be consistent with the tribe's constitution and bylaws.

12. The contract should provide that the tribe has the right to inspect the contractor's books relating to the gambling operation at reasonable times, such as during normal business hours, and should explicitly recognize the right of the tribe at any time to secure an independent audit of the contractor's accounts relating to the gambling operation.

13. The contract should have a provision for dispute resolution short of litigation preferably through a private procedure, such as arbitration.

14. The contract should clearly set out the grounds and procedures for termination of the contract. Breach of contract should be a ground for termination.

15. The tribe should have a valid ordinance authorizing and regulating the gambling activity to be conducted pursuant to the contract, and the contract should state that the gambling operation will be conducted in accordance with the tribal ordinance.

16. The contract should identify the party responsible for employment and personnel matters. A provision for Indian preference is desirable.

17. The contract should be consistent with any related lease of trust land.

18. The contract should provide that the contractor will not interfere with or attempt to influence internal affairs or governmental decisions of the tribe.

19. If existing provisions for law enforcement and fire protection are not adequate for the proposed enterprise, the contract should specify how these services will be provided.

20. The contract should be reviewed for legal sufficiency by the Regional or Field Solicitor's Office.

21. In your opinion, after review of a contract, is that the contract may not be in the best economic interest of the tribe, you should advise the tribe of your opinion and the reasons for it. However, if the tribe still wishes to proceed with the contract, and it appears that the tribe has entered into it at arms length and after careful consideration, the tribe's business judgment should be respected, and the contract should not be disapproved solely on the grounds that the tribe may have been able to make a better bargain. On the other hand, where it appears from the contract itself or from surrounding circumstances that the tribe has made a particularly unwise business decision or has been subjected to outside pressure, the contract should not be approved. To assist you in this assessment, you may wish to ask the tribe to submit a narrative describing how the contractor was selected and how the contract negotiations were conducted.

22. If contract modifications sufficient to bring the contract into conformity with these instructions cannot be accomplished, the contract should be disapproved.

23. Generally, the Superintendent should, within seven (7) working days of a tribal request to review a gambling management contract, transmit the documents submitted for review and approval to the Area Director. The Area Director should, within three (3) working days, send an acknowledgment of receipt of the documents to the tribe and the contractor. A final decision concerning the contract should be made as soon as possible, and not later than thirty (30) working days after the contract documents, the FBI reports, and the Solicitor's advice are received and after it is clear that no further modifications of the contract will be made.

24. Appeals from an Area Director's decision may be made pursuant to 25 CFR Part 2.

/s/ John W. (Illegible)

19. MARTIN DECLARATION

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-83-1117-LEW(Tx)

THE CABAZON BAND OF MISSSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA, and BEN CLARK,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

CASE NO CV-83-3073 (LEW)

MORONGO BAND OF MISSION, INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, et al.,

Defendants,

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

DECLARATION OF ROBERT MARTIN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, ROBERT MARTIN, DO HEREBY DECLARE:

1. I am the duly-elected Tribal Chairman of the Morongo Band of Mission Indians, having been elected to that position in July of 1983.

2. As Tribal Chairman, I am the highest official of the Morongo Band of Mission Indians and am responsible for overseeing all tribal programs and functions along with the Business Committee of the Morongo Band.

3. The Morongo Band of Mission Indians has a total annual income of less than ten thousand dollars ($10,000) per year from all sources. These funds are generated mainly from lease of reservation lands, from the granting of rights of way or easements for pipelines, power lines, and aqueducts across the reservation, and from similar sources. The only other funding which the Morongo Band receives is an occasional small grant from the Bureau of Indian Affairs for a specific purpose. The last such grant which we received was for $18,300 and was for the purpose of hiring a consultant to prepare policies and procedures for the tribes and for operating the tribal office.

4. The Morongo Band of Mission Indians does not have the revenues to provide necessary governmental and social welfare services to its members and believes that the operation of a Tribal Bingo Enterprise will enable the Morongo Band to generate the necessary revenues to provide these vital services. Therefore, it has entered into a new contract for the management of the Morongo Tribal

Bingo Enterprise in order to generate the revenues which are so badly needed by the tribe and its members.

5. One of the first projects that the Morongo Band is considering using its Bingo revenues for is a tribal fire department. The tribe does not presently have funding to repair and operate its fire truck. In addition, the tribe needs fire equipment and trained staff to operate its tribal fire department. The urgency for this project was recently emphasized when a home burned completely to the ground before the City or County fire departments even arrived on the scene. The slow response time of these non-Indian fire departments has been a serious problem in the past. Therefore, once the Band has revenue from the Bingo Enterprise, it hopes to address this problem as a matter of high priority. The Band is also in need of funds to repair and maintain its reservation water system which is seriously dilapidated at present. In addition, the Morongo Band is in need of funds to operate its tribal office, to build a center and provide programs for the tribal elders (senior citizens), to establish pre-school and day care programs for the children of its members, and to provide the whole range of governmental, social, educational, and welfare services for the members of the Morongo Band.

6. One of the major benefits of the Tribal Bingo Enterprise is that it created and will create employment on the Morongo Indian Reservation where the unemployment level is in excess of 64%. In its previous operation, the Enterprise employed approximately 86 Indians and it is planned that an even greater number of tribal members will be employed when we commence operations of our Bingo Enterprise again. The Morongo Band's control over all phases of the operation through our new management agreement

should insure that our tribal members are employed because preference will be given to tribal members when employees are hired.

7. The Morongo Band of Mission Indians previously required and will in the future require that, among other things, its Tribal Bingo Enterprise be open to the public, that all players must be present to play, the no alcohol may be served or consumed on the premises, that all participants must be eighteen years of age or older, and that the revenues therefrom be expended based on the tribal ordinances.

8. I am familiar with the Tribal Bingo Enterprise being operated by the Barona Group of the Capitan Grande Band of Mission Indians, having discussed it at length with the tribal chairman of said Band. To the best of my knowledge, that operation is virtually identical to the one which the Morongo Band has conducted and will conduct under its new Management Agreement with CBA Development Co., Inc. It is managed by a non-Indian who receives a percentage of the profits for its work; it is located on tribal land; the prizes sometimes exceed $250; it is open to the public, not just to members of the Barona Band; its profits are used for purposes similar to those allowed by the Morongo Bingo Ordinance, etc.

I, Robert Martin, declare under penalty of perjury that the above statements are true and correct to the best of my knowledge and belief, and that I have executed this statement at Banning, California on June 26, 1984.

/s/ ROBERT MARTIN

20. INTERIOR MEMORANDUM OF MARCH 2, 1983

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

(Seal)

MAR 2 1983

Memorandum

To: Legislative Counsel

From: Acting Assistant Secretary—Indian Affairs

Subject: Justice Department Proposed Criminal Code Revision

We have received a few pages of the subject legislative proposal for comment. We request an opportunity to review the entire bill.

With regard to the portions of the proposal we have received, we have the following comments:

1. We strongly oppose the proposed new section 1166 of title 18, U.S. Code.

   Section 1166 would subject Indian individuals, Indian organizations, and tribal governments to state laws with regard to licensing, regulation, or prohibition of gambling on Indian reservations.

   Such a proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983 which states that tribal governments *should have the primary responsibility for meeting the needs and desires of their clients,* and states that it is important *that tribes reduce their dependence on Federal funds by providing greater percentage of the cost of their self-government.* A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purposes enunciated in the President's Message. Given the often limited resources which tribes have for revenue-producing activities, it is

believed that this kind of revenue-producing possibility should be protected and enhanced.

The Bureau of Indian Affairs is establishing an Ad Hoc Task Force on bingo and related gambling activities undertaken by tribes. It may be possible to provide further information on this general subject after the Ad Hoc Committee has had a chance to meet and issue a report of its findings as to the nature and extent of Indian gambling activity, provisions of laws of the various States in which such gambling is carried on, the degree of importance of the activity to the tribes in their attempts to meet the needs of their people and reduce their dependence upon the Federal Government, and any need for Federal legislation or regulation under existing law.

2. We recommend that section 1114 of Title 18, U.S. Code be amended to delete the archaic reference "the Indian field service of the United States," and insert the modern reference "the Bureau of Indian Affairs or Indian Health Service,".

21. FELDMAN DECLARATION

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (Tx)

THE CABAZON BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
and BEN CLARK
Defendants,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
Defendant,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

DECLARATION OF GLENN M. FELDMAN IN SUPPORT OF PLAINTIFF CABAZON BAND OF MISSION INDIANS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: September 24, 1984

Time: 9:00 a.m.

Courtroom: 4

I, Glenn M. Feldman, do hereby state and declare:

1. I am the attorney of record for the plaintiff Cabazon Band of Mission Indians.

2. Attached hereto are true and correct photocopies of documents that I personally obtained from the United States Supreme Court, Washington, D.C., contained in the Supreme Court's files in *Bryan v. Itasca County*.

3. Attachment 1 is a copy of the cover of the Appendix filed in *Bryan v. Itasca County*.

4. Attachment 2 is a copy of the Index to that Appendix.

5 Attachment 3 is a copy of item M in that Index, a letter from Assistant Secretary of the Interior, Orme Lewis, to the Honorable A.L. Miller, Chairman, Committee on Interior and Insular Affairs of the House of Representatives, June 26, 1953.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 1984 at Washington, D.C.

/s/ Glenn M. Feldman

ATTACHMENT 1

APPENDIX

(Filed December 3, 1975)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-5027

RUSSELL BRYAN, Individually and on Behalf of
All Other Persons Similarly Situated,

Petitioner,

—*v.*—

ITASCA COUNTY, MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MINNESOTA

Petition For Certiorari Filed July 7, 1975
Certiorari Granted November 3, 1975

ATTACHMENT 2

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-5027

RUSSELL BRYAN, Individually and on Behalf of
All Other Persons Similarly Situated,

Petitioner,

—*v.*—

ITASCA COUNTY, MINNESOTA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MINNESOTA

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ATTACHMENT 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D.C.

June 26, 1953

My dear Mr. Miller:

This will refer to your request for a report on H.R. 1063, a bill "To amend title 18, United States Code, entitled 'Crimes and Criminal Procedure', with respect to State jurisdiction over offenses committed by or against Indians in the Indian country, and to confer on the State of California civil jurisdiction over Indians in the State".

I recommend that this bill be enacted if its title and text are amended to conform to the enclosed draft.

The bill would extend the criminal laws of the State of California to all the Indian country within that State. Concurrently, it would withdraw the entire State from the operation of the Federal Indian liquor laws. Finally, it would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved.

Approximately 30,000 Indians live in the State of California. They are divided into many different groups, widely dispersed throughout the State. Their lands include a large number of small rancherias and allotments, which are also widely scattered. The State lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in title 18, United States Code, section 1151, except in the

case of the Aqua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was conferred by the Act of October 5, 1949 (63 Stat. 705.)

The applicability of Federal criminal laws is also limited. The United State district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of title 18, United States Code. As a practical matter, the enforcement of law and order among Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. The Indians of the Hoopa Valley Reservation and the Yuma Reservation have a form of tribal law enforcement, but none of the other reservations in the State has any means of preserving law and order. Consequently, there is a serious hiatus in law enforcement authority that can best be remedied by conferring criminal jurisdiction on the State. The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A likely policy should be applied to the rest of the State. In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs

at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063. No opposition to the enactment of the proposed legislation was voiced by any of the Indian groups. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State, Representatives of other groups have also indicated their approval.

Proposed legislation similar to H.R. 1063 has been discussed with the Governor of California and he has indicated his approval of the objective of the proposal. The Legislature of Cailfornia, by Senate Joint Resolution No. 29, has recently memorialized the Congress to enact H.R. 1063.

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as these laws are of general application to private persons or private property. The revision would also make it clear that Indian tribal customs and ordinances would continue to be applicable to civil transactions among the Indians insofar as these customs or ordinances are not inconsistent with the applicable State laws. By so doing the predominance of State authority would be assured, but with a minimum of interference with Indian control of Indian affairs.

The enclosed draft is designed to perfect H.R. 1063 in a manner consistent with its basic intent. The only major substantive difference is the omission of the provisions that would have excluded the entire State from the Operation of the Federal Indian liquor laws. There is no doubt that the Indians of California are as prepared to be subjected to the other laws of the State. However, general legislation to repeal, in whole or in part, the Indian liquor laws is now before the Congress, and it seems preferable to deal with the subject in that matter rather than in a bill, such as H.R. 1063, having a different primary objective.

In large measure the criminal jurisdiction provisions of the enclosed draft are identical with those of H.R. 1063. The subsection that would have reserved to the Federal courts concurrent jurisdiction over offenses by or against Indians has been omitted as its effect would be to make persons in the Indian country subject to two different, and possibly conflicting, systems of law. For like reasons, a subsection has been added that would render inapplicable in California the Federal criminal laws which apply to offenses committed by or against Indians within the Indian country. Finally, the subsection relating to the protection of trust or restricted Indian property and of Indian fishing and hunting rights has been revised in an effort to make its provisions as precise and certain as possible.

The provisions of the enclosed draft relating to civil jurisdiction are based on those of H.R. 1063, but have been recast in a form that would permit them to be incorporated in the general body of the judicial laws as now codified in title 28 of the United States Code. These pro-

visions are designed to give the State of California jurisdiction over civil controversies and transactions involving Indians to the fullest extent consistent with the discharge of Federal responsibility for the protection of trust or restricted property. The State and its courts could not take any action that would affect the status of this property in any way or that would improperly deprive the Indians of any of the benefits therefrom. However, once the trust or restriction was terminated by the United States, the jurisdiction of the State and its courts would automatically attach.

Both H.R. 1063 and the enclosed draft would repeal section 1 of the Act of October 5, 1949 (63 Stat. 705), which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Aqua Caliente Indian Reservation. The enactment of H.R. 1063, applicable to the entire State, should be accompanied by the repeal of section 1 of this Act in order to make the same civil and criminal jurisdiction statute applicable to all Indian country within the State.

Since I am informed that there is a particular urgency for the submission of the views of the Department, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made concerning the relationship of the views expressed herein to the program of the President.

Sincerely yours,

Orme Lewis
Assistant Secretary of the
Interior

Hon. A. L. Miller, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington 25, D.C.
Enclosure

22. WELMAS DECLARATION

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THE CABAZON BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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THE CABAZON BAND OF MISSION INDIANS,

Plaintiff,

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THE COUNTY OF RIVERSIDE, CALIFORNIA and BEN CLARK

Defendants,

and

THE STATE OF CALIFORNIA,

—Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA

Defendant,

and

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

DECLARATION OF ARTHUR WELMAS IN SUPPORT OF PLAINTIFF CABAZON BAND OF MISSION INDIANS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: September 24, 1984
Time: 9:00 a.m.
Courtroom: 4

I, Arthur Welmas, declare and state as follows:

1. I am an enrolled member of the Cabazon Band of Mission Indians and am presently the elected Chairman of the Cabazon General Council and the Cabazon Business Committee. If called as a witness, I would testify of my own personal knowledge to the facts set forth herein.

2. The Cabazon Band is a federally recognized Indian tribe with Articles of Association approved by the Sacramento Area Director, Bureau of Indian Affairs and with a governing body recognized by the Secretary of the Interior. The Cabazon Band exercises soverignty over the Cabazon Indian Reservation, which was originally established by President Ulysses S. Grant on October 15, 1867.

3. The Cabazon Indian Reservation consists of approximately 1700 acres of arid, desert land in Riverside County, California, lying generally between the cities of Indio, Coachella, Mecca and Thermal. Our reservation

contains no natural resources, such as oil, natural gas, coal or timber, which could provide the Cabazon Band with a source of tribal revenue.

4. President Reagan, in his statement on "Indian Policy" last year, said that Indian Tribes must place less reliance on federal funds and federal programs, and assume a greater responsibility for their own economic development, through tribal initiatives. The Cabazon Band has believed in this philosophy for a long time. In the past, we have received a small federal grant each year from the Bureau of Indian Affairs, generally between $5.000-$7,000. However, we recognize that we cannot rely on government handout programs for our tribal existence. The Cabazon Band has adopted a policy of trying to pay our own way.

5. At the present time, the only sources of tribal revenues available to the Cabazon Band are our tribal card club, the Cabazon Indian Casino, and our tribal bingo parlor, the Cabazon Bingo Palace.

6. Without the revenues and tribal taxes from these enterprises, the Cabazon Band would have no source of funds to operate our tribal government, or to provide tribal services and programs on the reservation.

7. Among the programs and services that the Cabazon Band is able to provide from card room and bingo parlor revenues are:

A. a privately funded health insurance plan for tribal members and their families;

B. a fully-trained Cabazon tribal security force;

C. a full-time tribal office with secretary;

D. extension of basic utility services to the Reservation;

E. a U.S. Postal Service sub-station on the Reservation;

F. traditional funeral and mourning ceremony expenses;

G. upkeep of the tribal cemetary;

H. preparation, review and evaluation of other economic development proposals.

8. In addition, we have recently been able to establish a tribal court system using card room and bingo revenues. In the first case brought in our tribal court, we were able to fully resolve a long-standing dispute with a non-Indian billboard company. Attached hereto is a recent newspaper story on the successful resolution of this case, and a statement issued by the president of the billboard company, in which he commends the Cabazon Band for "having created a tribal judiciary where non-tribal members can obtain fair and impartial treatment." We now view our tribal court system as an important element of the Cabazon tribal government.

9. In addition, our tribal enterprises provide employment opportunities for all tribal members that need jobs, particularly those with the fewest job skills and the least chance for employment elsewhere. Without these jobs, many of these people would be on welfare. Almost half of the adult members of the Band are employed at the card club or bingo parlor.

10. The Cabazon Band also owns a 51% share in the Palm Springs Regional Trap and Skeet Range, which is located on our Reservation. So far, however, that business is just barely breaking even, with revenues just covering expenses. We do not know if that business venture

will ever be successful, but so far the Cabazon Band has received no income from that enterprise.

11. The State of California is suggesting in this case that our card room and bingo parlor should be shut down because they could be taken over by "organized crime." Our card room has been operating now for almost four years with no such problem. In one instance, we learned that one employee was reputed to have some "organized crime" ties. We fired that employee on the spot, no questions asked. We don't want crooks or criminals involved here. If a problem ever arose that needed law enforcement assistance, we would call in the FBI.

12. The State also gives the impression that our card room and bingo parlor are not being regulated. That is not true. Our tribal enterprises are regulated under Tribal Ordinances, and under the supervision of our tribal Commissioner of Gaming, John James, and the Cabazon Business Committee.

13. We also comply with all federal laws and regulations and with state laws where they should not have the effect of shutting down our enterprises. So, for example, the Cabazon Band has obtained a California state beer and wine license for the bar in our card club. We also pay all applicable California state sales taxes. Last year, the State of California passed a law requiring all card rooms in the state to register with the Attorney General's office. Although we don't believe that law applies to our card room on the Reservation, we voluntarily complied with that new state law and registered. Finally, federal IRS regulations require that bingo operators obtain certain information from persons who win prizes over $1,200

and report that information to the IRS. Our tribal bingo parlor complies with that federal regulation.

14. Our card club and bingo parlor are the cornerstones of our plan for future economic development of the Cabazon Indian Reservation and eventual economic self-sufficiency for the Band. For this reason, I believe it is crucial to the future of the Cabazon Band that our card club and bingo parlor be permitted to operate.

15. Without these sources of revenue, it would be virtually impossible to maintain a viable tribal government.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Indio, California this 26th day of July, 1984.

/s/ Arthur Welmas

Indians, ad company settle billboard dispute
The Press Enterprise 6/30/1984

INDIO — The Cabazon Band of Mission Indians and Naegele Outdoor Advertising Co. have settled a protracted dispute over 15 billboards installed on reservation land.

The advertising signs were erected along Interstate 10 and Highway 86 in 1979 based on a contract which the Cabazons and Naegele Co. now agree was invalid.

Under the settlement reached in the Cabazons' tribal court, the billboard company has agreed to remove all but two advertising signs. Those remaining billboards will become property of the Indian tribe, according to John Andrews, president of Naegele's California operations, based in Cathedral City.

The company will not seek any money from the Indians or state any claim on reseravtion land to install billboards in the future, according to the settlement.

John Phillip Nichols, tribal administrator, said the contracts for the billboards were negotiated and signed by then-Tribal Chairman Joseph Benitez without authorization from the tribe's General Council.

One of the contracts allowed a billboard to be installed on Benitez's alloted land and the other provided for the several billboards on reservation land controlled by the General Council, Nichols said.

The council found Benitez to be guilty of conflict of interest, non-disclosure of a business transaction and other improprieties.

Nichols said he expects that Naegele will attempt to recover any losses from Benitez in Superior Court.

Benitez could not be reached for comment yesterday. He is among a group of Cabazon dissidents who have questioned the leadership of Arthur Welmas, tribal chairman, and criticized the management services provided by Nichols and his family, who are not members of the tribe.

The dissidents have supported the attempts by state and county government to shut down the Cabazons' bingo and poker operations. Both are protected by a federal court order pending the outcome of a lawsuit filed by the Cabazons against the county.

According to a letter from Robert O. Naegele, chairman of the board of Naegele Outdoor Advertising Co., to Welmas, the contracts signed in 1978 stemmed from misrepresentations by Benitez.

Naegele Co. paid Benitez $6,304 to lease part of Benitez's alloted land for a billboard and $132,521 for billboard sites on the reservation land.

The Cabazons, in turn, paid Naegele Co. $40,000 for the billboards themselves. The check was co-signed by Benitez and William Callaway, another Cabazon dissident.

In the letter, Naegele said the company was informed by Benitez that Benitez "had the full approval of the Cabazon Band of Mission Indians" to authorize the billboard contracts.

Nichols said the Cabazons tribal court handles civil matters that pertain to reservation land. Welmas serves as chief justice. Nichols handles administrative duties and and an attorney acts as a consultant.

Naegele Co. will be returning to tribal court, Nichols said, on a restraint of trade case brought by a competitor, Seymour Buxbom of Desert Outdoor Advertising.

Attorneys for the two billboard companies have acknowledged the tribal court's jurisdiction in the dispute, according to Nichols.

STATEMENT

The Naegele Outdoor Advertising Corporation of California is pleased to announce the final resolution of a long standing dispute involving certain outdoor advertising structures located on the Cabazon Indian reservation. These structures were erected by the Naegele Corporation for the Cabazon Band of Mission Indians in 1979. Following a hearing in the Cabazon tribal court last week all par-

ties have now concluded that the alleged agreement under which these signs were originally constructed was invalid because the Cabazon Tribal Chairman at the time, Mr. Joseph Benitez never obtained the necessary approval of the Cabazon General Council to this agreement.

Under the terms of the order entered into by the tribal court the Naegele Corporation has agreed to remove all of the signs on the Cabazon Indian Reservation with the exception of one structure on Hwy 10, and one structure on Hwy 86, both of which will become the property of the Cabazon Band. In addition, both the Naegele Corporation and the Cabazon Band have agreed to waive any claims for money damages or other compensation which they may have against the other party.

The Naegele Outdoor Advertising Corporation has always sought to promote Indian tribal sovereignty. For this reason, we are extremely pleased that this matter was resolved within the Cabazon tribal court.

We found all proceedings in the tribal court to be conducted fairly and partially. We commend the Cabazon Band of Mission Indians for having created a tribal judiciary where non-tribal members can obtain fair and impartial treatment.

We, the Naegele Outdoor Advertising Company of California want to state for the record that we; as all other companies doing business on Federally recognized Indian Reservations are obligated to use the tribal court system on any reservation upon which we do business.

We want to publically state our admiration for the present tribal officers of the Cabazon Band of Mission Indians and

for the tremendous accomplishments they have achieved in teh area of economic development by the creation of the Cabazon Indian Casino, Bingo Palace and the Palm Springs Regional Trap and Skeet Range.

5/17/84 — Read by Mr. John Andrews live on KCHV — Radio Hour Show.

23. SUPPLEMENTAL RESPONSE TO INTERROGATORIES

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Attorneys for Plaintiff
THE CABAZON BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (Tx)

THE CABAZON BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA and BEN CLARK,

Defendants,

and

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,

Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA,

Defendant,

and

THE STATE OF CALIFORNIA,

Defendant-Intervenor.

SUPPLEMENTAL RESPONSE OF PLAINTIFF CABAZON BAND OF MISSION INDIANS TO INTERROGATORIES PROPOUNDED BY COUNTY OF RIVERSIDE AND STATE OF CALIFORNIA

In its February 9, 1984 response to interrogatories propounded by the County of Riverside and the State of California, plaintiff Cabazon Band of Mission Indians objected to certain interrogatories on the grounds that they were irrelevant to the subject matter of this action and would not lead to the discovery of admissible evidence. Without waiving such objections, and solely for the purpose of expediting the resolution of this action, plaintiff Cabazon Band hereby supplements its responses to interrogatories number 12 and 15.

12. Describe the size and physical facility in which the bingo games are conducted. What is the total number of participants which the tribe can accommodate? What is the seating capacity? Does the bingo facility comport with local fire and safety regulations? Please respond as to the card room operations as well, and separately.

RESPONSE: The Cabazon bingo parlor is approximately 9,000 square feet in size and can accommodate ap-

proximately 500 players. The Cabazon card room is approximately 6,000 square feet in size and contains 25 card tables, which can accommodate 200 players. Both buildings comply with applicable fire and safety regulations.

15. What is the size of the jackpot or prize, and how is it determined? What is the maximum jackpot or prize? What is the average jackpot or prize? What is the minimum jackpot or prize? Please respond as to both the card room and the bingo operations separately.

RESPONSE: The Cabazon Band further objects to this interrogatory with respect to the bingo parlor on the ground that it does not specify the time period for which such information is sought; that it would require the compilation, abstract or summary of information which may or may not exist, in whole or in part; that such compilation, abstract or summary would be unduly burdensome, oppressive and expensive to perform; and that the information obtained would be of little benefit to the resolution of the instant action.

However, in the interest of expediting the resolution of this matter, the Cabazon Band, at great time and expense, has compiled the information requested for the period January 1, 1984 through April 30, 1984. For this most recent four month period, the average jackpot or prize per bingo game conducted at the Cabazon bingo parlor was $184.89. The largest jackpot or prize awarded during that period was an automobile the cost of which was $8,169.21. The smallest jackpot or prize awarded during that period was $25.00.

With respect to the Cabazon card room, the size of each card game "pot" is determined by the number of players in the game, the betting limits for that game and the frequency of betting. No information is kept, compiled or maintained with respect to the size of such "pots."

CERTIFICATION

I hereby certify that the foregoing responses and objections to interrogatories propounded by defendant County of Riverside and defendant-intervenor State of California have been made in conformity with Rule 26(g), Federal Rules of Civil Procedure.

/s/ Glenn M. Feldman
Ziontz, Pirtle, Morisset,
Ernstoff & Chestnut
Attorneys for plaintiff
Cabazon Band of Mission Indians

May 4, 1984

CERTIFICATE OF SERVICE

I, Glenn M. Feldman, do hereby certify that on this 4th day of May, 1984, I served a copy of the foregoing supplemental response of Cabazon Band of Mission Indians to interrogatories propounded by County of Riverside and State of California by Federal Express overnight delivery service addressed to:

GLENN R. SALTER, ESQ.
Deputy County Counsel
Office of the County Counsel
3535 Tenth Street, Suite 300
Riverside, CA 92501

RUDOLF CORONA, JR., ESQ.
RODERICK E. WALSTON
Deputy Attorneys General
Office of the Attorney General
110 West A Street, Suite 700
San Diego, CA 92101

I declare under the penalty of perjury that the foregoing statement is true and correct.

/s/ Glenn M. Feldman

24. BALLOT ARGUMENT (1950)

Proposed

AMENDMENTS TO CONSTITUTION

PROPOSITIONS AND
PROPOSED LAWS

Together With Arguments

To Be Submitted to the Electors
of the State of California at the

GENERAL ELECTION
TUESDAY, NOV. 7, 1950

Compiled by RALPH N. KLEPS, Legislative Counsel

Distributed by FRANK M. JORDAN, Secretary of State

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* * *

LEGALIZING AND LICENSING GAMBLING. Initiative Constitutional Amendment. Adds Article XXXII to Constitution. Permits wagering and gambling in licensed establishments. Creates five-man state commission empowered to license and supervise pari-mutual betting at tracks, off-track bookmaking, wagering on athletic and skill contests, and gambling games and devices. Authorizes commission to operate or license gaming, lotteries, etc. Imposes percentage taxes on money wagered, revenue to be deposited in pension and welfare fund for payment of aged and blind aid allowances. Names first members of commission, future members to be elected. Continues licensing authority of Horse Racing Board..

Yes ——— No ———

Argument Against Initiative Proposition No. 6

For California's welfare, for the security of your home, your children, your schools and your government, vote NO on Proposition No. 6.

At a time when the entire country is aroused over the growing power of nation-wide crime syndicates, when the prevalence of racketeering has become a national scandal, California is asked, by glib promoters, to adopt a constitutional amendment that would encourage big-time crime, civic corruption and juvenile delinquency and make law enforcement tremendously more difficult.

Deceptively titled "Jension and Welfare Funding Act," Proposition No. 6 would in no way improve the status of pension recipients nor change requirements for qualification.

Actually, Proposition No. 6 is a sordid scheme to license every known form of gambling, and create a vastly profitable gambling empire under the absolute control of five promoters who brazenly name themselves—in the act—as Gambling Commissioners! The Commission is not subject to control by either the Governor or the Legislature.

Proposition No. 6 would give these self-appointed gambling czars the power to license all types of gambling all over the State—including gambling on the results of high school and college sports. It exempts gamblers from all excise and other tax conditions.

Without restrictions of any existing law, or any future act of the Legislature, the five-man gambling commission could set up race tracks for dogs or horses in any number at any place in the State to operate 365 days of the year!

It would have the power to dictate to every gambling licensee the exact type of gambling machine he must use in his establishment.

Finally, Proposition No. 6 would give the five Gambling Czars—who name themselves in the act—the power to operate their own gambling establishments—to create a state-wide gambling monopoly under their personal control! Far from "guaranteeing" pension payments—Proposition No. 6 actually would give its promoters a blank check on the State Treasury to cover any deficits that might result from their operations. Just to get them started, the five-man commission would be handed $6,000,000 from the State Treasury!

So absolute would be the powers vested in this five-man commission that people playing friendly games of bridge, poker or canasta, for small stakes at home would have to secure licenses or face the threat of jail sentences!

The unfortunate experience of other states and communities that have attempted to curb gambling abuses by licensing has shown conclusively that serious crime rackets have mushroomed when professional gambling was sanctioned.

The eyes of the underworld are on California. If Proposition No. 6 is enacted, only disaster can result—big-time gangsterism, rampant crime of every description, civic corruption on an unprecedented scale, and a running, bloody warfare for control of the gangland rackets.

Keep the crime rackets out! Keep California a place where Californians will continue to be proud and happy to live.

Vote NO on 6!

FRANCIS V. KEESLING, SR.
Chairman, Californians Against the
Gambling Combine

MRS. EDWARD T. WALKER
President, California Congress of
Parents and Teachers

MRS. CHALMERS McGAUGHEY
Chairman, Southern California Citizens
Committee

25. BALLOT ARGUMENT (1976)

CALIFORNIA
VOTERS
PAMPHLET

June 8, 1976
Primary Election

Compiled by March Fong Eu
Secretary of State
Analyses by A. Alan Post
Legislative Analyst

(SEAL)

Ballot Title

BINGO. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Permits Legislature to authorize cities and counties to provide for bingo games, but only for charitable purposes. Financial impact: None on state; nominal fiscal effects on cities and counties.

FINAL VOTE CAST BY LEGISLATURE ON ACA 3 (PROPOSITION 9):

ASSEMBLY—Ayes, 57	SENATE—Ayes, 27
Noes, 16	Noes, 11

Analysis by Legislative Analyst

PROPOSAL:

The Constitution prohibits lotteries in California. Bingo is a form of lottery if the players pay for a chance to win a prize.

This proposal would let the Legislature authorize cities and counties to permit bingo for charitable purposes.

* * *

TEXT OF PROPOSED LAW

* * *

PROPOSED AMENDMENT TO ARTICLE IV, SECTION 19

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

ARGUMENT IN FAVOR OF PROPOSITION 9

Proposition 9 deserves your favorable vote. This proposal will add a single sentence to our State Constitution making it possible to play bingo legally provided the proceeds are used for charitable purposes only.

It is presently illegal to play bingo anywhere in California under almost any circumstances.

The enabling act, AB 144 (1975), permits bingo games for charitable purposes where it is authorized by a local ordinance and conducted by nonprofit charitable organizations. All proceeds must be used for charitable purposes. The statute (AB 144) was written to preclude participation by the underworld. The charitable organization running the game must be recognized as a charity and exempt from taxation by both State and federal government. The games must be conducted by members of the organization and no individual connected with the games can receive a salary, wage or profit from the conduct of such bingo games.

Opponents point to problems in other states long since corrected by those states. And unlike other states permitting bingo, this proposal does not permit bingo for profit.

Your favorable vote on Proposition 9 will allow those who wish to play an opportunity to play bingo while both enjoying themselves and benefiting charity.

LEROY F. GREENE
Member of the Assembly, 6th District

* * *

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 9

The opponents say commercialized Bingo is big, bad, corrupt business. Is Bingo played "illegally" daily throughout California by churches, civic organizations and others big, bad, corrupt business?

The opponents point to a Florida law long since amended and the Iowa law which does not contain all our safeguards. Comparisons without merit. Neither these states nor approximately 26 others are about to give up their legalized Bingo.

The opponents refer to the Attorney General's Task Force of Legalized Gambling neglecting to state its conclusion. After reviewing all states that permitted Bingo the Task Force wrote: (pages 32-33) "The general opinion of both law enforcement and public administration authorities interviewed seems to confer approval on the legalization of Bingo for civic, religious and charitable purposes. On the whole, they felt that a properly regulated and conducted Bingo game presented no law enforcement problems of substance."

The opponents want more bureaucracy; statewide licensing, statewide regulation, limits on frequency of games and statewide supervision. Our Statute provides local con-

trol and supervision requiring an ordinance by the City or County before Bingo could be played.

A "no" vote will not prevent Bingo from being played. It is played illegally daily.

A "yes" vote will allow people to play Bingo legally. There will be no commercial profit. All proceeds go to charity.

Finally, opposition arguments concentrate on the Attorney General's Task Force Report—But the Attorney General does not oppose this measure. He has reviewed the Statute and finds no enforcement problems.

LEROY F. GREENE
Member of the Assembly, 6th District

26. ASSEMBLY INTERIM COMMITTEE REPORT

ASSEMBLY INTERIM COMMITTEE REPORTS
1961-1963

VOLUME 27 NUMBER 2

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON CONSTITUTIONAL AMENDMENTS TO THE CALIFORNIA LEGISLATURE

(House Resolution 361, 1961)

PART 1

MEMBERS OF THE COMMITEE
MILTON MARKS, *Chairman*
DON A. ALLEN, SR., *Vice Chairman*

TOM BANE	BRUCE SUMNER
JOHN A. BUSTERUD	VINCENT THOMAS
WALTER I. DAHL	JOHN C. WILLIAMSON
HOUSTON I. FLOURNOY	CHARLES H. WILSON

STAFF

MELVYN J. COBEN, *Committee Consultant*
ALMA RICKER, *Committee Secretary*

January 7, 1963

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. JESSE M. UNRUH	HON. CARLOS BEE
Speaker	*Speaker pro Tempore*
HON. JEROME R. WALDIE	HON. JOSEPH C. SHELL
Majority Floor Leader	*Minority Floor Leader*

ARTHUR A. OHNIMUS
Chief Clerk

III. LOTTERIES—BINGO

Under Article IV, Section 26, of the Constitution, lotteries are prohibited. This section has been interpreted to classify bingo as a lottery, and thus prohibited. Many worthwhile organizations have historically used bingo as a means of raising revenue for legitimate functions. The problem that California has faced on this subject is that legalization of bingo would not only permit legitimate organizations to participate, but would also allow introduction of persons and groups whose purposes are not as worthwhile.

Unless adequate standards were established, the repeal of Article IV, Section 26 of the Constitution as it relates to bingo could lead to encouragement of professional gambling. For this reason there appears universal support for the position that if bingo were legalized only members of an organization in good standing would be allowed to operate the game for the organization in question.

Another problem involved is the proper classification or organizations so as to prevent the formation of groups which had an alleged proper purpose, but whose main function was to encourage gambling under the cloak of legality.

A number of the witnesses who appeared before the committee recommended that only congressionally chartered organizations be permitted to play bingo. Such a limitation would have excluded many legitimate civic clubs and organizations. The Legislative Counsel's opinion following this analysis sets out an exhaustive list of 51 congressionally chartered organizations. In addition, 13 states,

the Legislative Counsel points out, presently permit bingo games for the benefit of nonprofit organizations chartered by Congress.

During the course of the committee's hearing on this matter eight issues were raised:

1. Permit the unrestricted playing of bingo.
2. Permit bingo playing only by congressionally chartered organizations.
3. Permit bingo playing by any state-approved organization of a charitable character.
4. Permit only the members of the organization to play.
5. Permit only the members to operate the game, but allow the public to play.
6. Limit the purposes for which bingo raised funds can be used.
7. After having limited the organizations allowed to use bingo as a fund-raising device, leave the use of funds unrestricted.
8. Should a tax be imposed and, if so, by whom, city, county or state?

The organizations which appeared in support of the measure before the committee were of the highest caliber and indicated that the purposes for which would operate bingo games, if legalized, were most worthy. The committee also received recommendations that the committee consider broadening the scope of organizations which would be permitted to engage in such games beyond those specifically mentioned in the legislation presented to the committee. Such a recommendation raised the question of setting appropriate standards which would be equitable and which would protect the State of California from in-

filtration of undesirable elements into the State who might take advantage of legislation designed to benefit worthwhile groups and organizations.

CONCLUSION

In light of the law enforcement problem inevitable in the legislation of bingo, plus the manifestly difficult problem of classifying organizations which should be allowed to use bingo for fund-raising purposes, the committee concluded further study of this matter is needed. Since the purposes for which funds would be raised are obviously beneficial to the people of the State, after solving the procedural problems involved. this matter should be reconsidered.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, May 8, 1962

HON. CHARLES W. MEYERS
State Building, San Francisco 2, California